Jurisdictional Statement

No. 81 6106

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

Richard C. Ivey,

Appellant,

v.

State of Alaska,

Appellee.

On Appeal from the Supreme Court of Alaska

Jurisdictional Statement

State Criminal Case

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QUESTIONS PRESENTED

Did the Alaska Court of Appeals err in upholding the false pretense and forgery statutes (fraudulent misrepresentation) by applying a hard core conduct standard for public school curriculum and instruction as opposed to First Amendment precision of regulation and strict scrutiny justification?

Did the Alaska Court of Appeals err in upholding the false presenses and forgery statutes (fraudulent misrepresentation) over those federal civil rights and education statutes and equal protection provisions requiring recognition of public school curriculum and instruction for Alaskan Natives?

Did the Alaska Court of Appeals err in severing the attorney-client relationship with assigned counsel on the grounds that a criminal defendant has no right to choose assigned counsel under the Sixth and Fourteenth Amendments?

LISTING OF THE PARTIES

The following are the parties and counsel represented in this Court action:

Appellant. Richard C. Ivey, is representing himself in propria persona, with mailing address: 6333 College Grove Way #I-1, San Diego, California 92115 (telephone: 714/287-3914)

Appellee. State of Alaska is represented by Patrick J. Gullufsen, District Attorney, State Department of Law, Pouch KA, Juneau, Alaska 99811 (telephone: 907/465-3620)

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OPINIONS BELOW

The opinion of the Alaska Court of Appeals is unreported and is annexed as Appendix A. The order of the Alaska Court of Appeals in denying appellant's petition for rehearing is unreported and is annexed as Appendix B. The order of the Alaska Supreme Court in denying appellant's petition for hearing is unreported and is annexed as Appendix C.

JURISDICTION

In affirming appellant's conviction, the Alaska Court of Appeals sustained the constitutionality of former sections 11.20.360 and 11.25.010 of the Alaska Statutes, pertaining to false pretenses and forgery, respectively. The judgment of Alaska Court of Appeals entered on October 26, 1981, and is annexed as Appendix D. A notice of appeal was filed in both the Alaska Supreme Court and the Alaska Superior Court, Fourth Judicial District, Fairbanks, the latter court possessed of the record, on October 31, 1981, and is annexed as Appendix E.

The jurisdiction of this Court is conferred by Title 28, United States Code, Sections 1257(1) and 1257(2).

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment, United States Constitution.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to prtition the Government for a redress of grievances.

Sixth Amendment, United States Constitution.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committee, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment, Section 1, United States Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

Title 28, United States Code, Section 1257(2):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties,or laws of the United States, and the decision is in favor of its validity.

STATEMENT OF THE CASE

This section is divided into three parts: introductory background, racially dual schools, and essential jurisdictional facts (i.e., timely and properly raised issues, ruling on the federal question below, finality, highest state court, and the "28 U.S.C. 1257" facts).

The need for introductory background facts lies in the Alaska criminal charges, which had the effect of claiming that an entire Alaska Native vocational school was non-existent. To accomplish such a legal feat was no simple undertaking, as the Alaska Appeals Court stated (at Appendix A, p. 1):

> Ivey's charges arose from a complex and extended series of activities occurring during the academic year 1975-76 when Ivey served as director of the University of Alaska's Barrow Extension Center (hereinafter extension center).

It was this Barrow institution that the Alaska criminal prosecution sought to declare a fiction. An examination of Alaska race relations provides substance to Ivey's defense that the prosecution's objective was enforcement of racially dual schools.

Judicial history on the subject of Alaska race relations conspicuously omits the problems experienced in public education. There are published cases which generally cite favorable reports of race relations in Alaska. Metlakatla Indian Community v. Egan, 369 U.S. 45, 51, 82 S.Ct. 552, 7L.Ed.2d 562(1962). Subsequent caselaw is not so favorable as to the Eskimo population. Hicklin v. Orbeck, 437 U.S. 518, 527, 98 S.Ct. 2482, 2488, 57 L.Ed.2d 397, 405 (1978).

These reports do not mention that de jure racially dual schools were established in Alaska shortly after the Plessy v. Ferguson decision, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). Racially non-discriminatory statutes were repealed in favor of

enactments requiring racially dual schools. See: 23 Stat. 27, ch. 53, Act of May 17, 1984, at Section 13; 31 Stat. 330, ch. 786, Act of June 6, 1900, at Section 28; 33 Stat. 619, ch. 277, Act of January 27, 1905, at Section 7; 39 Stat. 1131, ch. 167, Act of March 3, 1971; 43 Stat. 978, ch. 320, Act of February 25, 1925, at Section 1; and 46 Stat. 321, ch. 273, Act of May 14, 1930; see also: Hootch v. Alaska State-Operated School System, 536 P.2d 793, 801 (Alaska 1975).

Just as other states criminally enforced racially dual schools (Berea College v. Kentucky, 211 U.S. 45 (note J. Harlan dissent at 58), 29 S.Ct. 33, 53 L.Ed. 81 (1908)), Alaska Courts enforced their racially segregated schools. Davis v. Sitka School Board, 3 Alaska 481, 494, 495 (1908); Sing v. Sitka School Board, 7 Alaska 616 (1927); see also: Hootch, supra at 536 P.2d 800, 801.

Applying these generalizations to the Barrow area requires some insight into the socio-economic characteristics of the local population. This location contains a mostly Alaska Native people whom the Congress of the United States has defined as Arctic Slope Natives. Title 43 United States Code, Sections 1602(b) - (d), 1604(b), and 1610(b)(1). The official census reports state that the Barrow population has relatively few skilled, technical, or professional workers and has sparse facilities. United States Department of Commerce, Bureau of the Census, 1970 Census of Population, Characteristics of the Population, Volume 1, Part 3, Alaska (January 1973), Tables 119-121.

Racially Dual Schools

The 1975-1976 school year in Barrow was the third year of the University of Alaska's local extension center. The first two years involved no Eskimo participation. When the 1975-1976

school year reported Eskimo participation, then the prosecution charged the participation was a fiction. Concurrently, the extension center was terminated indefinitely. All Eskimo participation in vocational education was recognized as having existed under only Eskimo auspices. For this purpose, a local municipal scholarship commission, euphemistically termed "Inupiat University," became the state's repository for Eskimo training. An inspection of the first two years of the extension center reveals why Eskimo participation was administratively foreclosed.

1. The 1973-74 and 1974-75 discriminatory pattern.

The first extension professional staff received a small salary and maintained dual employment with the local Bureau of Indian Affairs school. This defense witness testified:

> Defense counsel. In fact, did you or did you not offer any courses in adult vocational education while you were Barrow Extension Center Director?
>
> David Fausky. They were offered. They didn't -- they didn't take place.
>
> (Transcript, p. 1209)

On cross-examination, the same witness testified as to his observations regarding his successor for the 1974-75 school year:

> Presecutor. Do you have any first-hand knowledge of the University of Alaska courses that may or may not have taken place during the '75-'76 school year here through the extension center?
>
> David Fausky. I didn't participate in any. During the -- during the time that Tom Havill was the extension center director, we had a number of meetings and discussions about classes that would be useful to the regional corporation. His area -- his professional area was in geography and -- political science or political geography and we had frequent discussions, mostly informal on things that would be useful to ASRC in that area. None of which came to pass during the time that he was extension area director. And ....
>
> (Transcript, pp. 1228, 1229)

The witness also provided his observations as to the efforts of the municipal government in overcoming Eskimo non-participation, including cultural barriers, rigid classroom lecture instruction,

lack of community involvement, and local governance:

> Defense counsel. Is there any way that you could draw any kind of -- well, let me rephrase that. How would you compare what the extension center was doing with what the /municipal or North Slope Borough/ post secondary committee wanted to do? Can you make a comparison there at all?
>
> David Fausky. I think the principal difference between what was offered under the extension center of the university as I was acquainted and familiar with it and what the post secondary program was concerned with as it met originally and continued to work on the development of the post secondary program was that a continuity and direct involvement with people was essential to the success of any kind of meaningful program. In other words, the University of Alaska at Fairbanks thru its extension service could or could not come up with -- with interesting or effective or appropriate classes in some way. But purely academic or esoteric or just things that people might want to learn about is properly appropriate for the university in one way. But these things had to be coordinated with Bethel and Nome and Kotzebue and Dillingham and Talkeetna and every place else. And that obviously put a great restriction on it. Secondly, when somebody came in from Fairbanks or representing the University from someplace else as a visiting lecturer or professor or coordinator or something, they arrived in town and had to become acquainted with people in a very short time and shortly after that they left. And so the post secondary committee and I think all the organizations represented on it, felt it was essential to develop a program where there was a continuing presence and a continuing involvement given the assumption that people would have to probably be essentially on-the-job training situation because of the limited manpower and the rapidly expanding areas of responsility for the North Slope Borough government and for the regional corporation, for the village corporations and for the school district going into its secondary /high school/ program and self-government -- self-local administration. All -- all the major organization had rapidly growing responsibility areas and limited manpower and post secondary -- or the post secondary group /of the North Slope Borough/ was essentially looking at this continuity and regular evaluation.
>
> (Transcript, pp. 1219, 1220)

Another University of Alaska official, Dr. Samuel Rogers, whose expertise was vocational education, set forth the particulars of how instruction in bush Alaska must mirror the urban university campus. That is, the university recognized only that which was modeled after actual on-campus classroom lectures in Fairbanks:

> Defense counsel. In '75 and '76 there wasn't an rural education affairs catalog?
>
> Rogers. No.
>
> Defense counsel. Defendant's Exhibit 63, a University of

Alaska, Fairbanks catalog '75, '76. This would be a catalog that could be used then in setting up courses?

Rogers. Yes, this would be -- normally this was the case, because until REA was formed, Rural Educational Affairs, the state was divided into three regions: the southcentral, the northern and the southeastern region. And normally the centers that fell within that region used the catalog of the -- of the parent school. In the case of Barrow normally the courses came out of the Fairbanks catalog. One of the reasons Rural Education Affairs was formed though was because the needs out in the bush were much different than the needs on the four-year campuses. And we wanted to have the flexibility to design our own courses that could better meet the local need. And so that was one of the prime reasons that Rural Education Affairs was put together. (Transcript, pp. 1331, 1332)

This same University of Alaska official testified as to the difference between classroom lecture instruction and vocational education:

Rogers. Well, the academic programs are normally traditional in design, which means that they would be conducted in a classroom in a defined space, with a defined instructor who would normally start with a class and the classes would be fairly rigidly scheduled, like maybe Monday, Wednesday and Friday at -- at 8:00 o'clock or something like that. Vocational programs are normally outside the parameters of a defined area. In other words they're more into the community. The students might be scattered around. There could be a class of 10, for example, in cooperative education and all 10 of these students might meet periodically you know, at different times with different people, maybe 10 students might be working at 10 different jobs, and this would be considered a vocational education class. Anchorage has it going all the time.

(Transcript, p. 1332)

Dr. Rogers further testified that under the Anchorage approach to vocational education, students enroll in non-classroom vocational training and the actual implementation could be subcontracted to the extent that several persons would assist in the instructional effort in differing capacities. The student would be aware of his enrollment but not necessarily aware of a traditional classroom professor. In addition, because of changing weather conditions and subsistence lifestyles, a vocational training format can be legitimately modified to adapt the classroom lecture model to the bush Alaska situation. Starting and ending times can be staggered. Job sites can be substituted for traditional lecture rooms. Single lecturers can

be replaced or augmented by team teaching, including journeymen workers at the job site. (Transcript, pp. 1347-1349) Dr. Rogers testified that the Fairbanks administration was very limited in its vocational education activities, despite their advertising same in the University campus catalog for extension centers. (Transcript, pp. 1332, 1334, 1335) The Alaska Appeals Court, reviewing "the record as a whole in the light most favorable to the state," concluded that:

> There is no dispute that the requirements of certain federal regulations, specifically 45 CFR 102.6 (adopted February 1975 /error: May 9, 1970, at 35 Federal Register 7334/ had not yet been implemented by the University of Alaska during the 1975-76 school year. (Appendix A at 24, 35)

These regulations required that the Anchorage approach to vocational education be made available to the Fairbanks region also.

In a few words, at the close of the 1974-75 school year, the Fairbanks region served by the University of Alaska experienced race relations different from the rest of the state. Their curriculum and instructional practices were visibly non-Native owing to lacl of Eskimo instructional staff ("cultural barrier"), rigid classroom lecture models for bush areas, and absence of local community involvement.

2. Transition period: the municipal scholarship agency.

To make for a more responsive public education system, the local (Barrow) government legislated a vehicle for bringing about the Anchorage approach to adult training. For this purpose Ordinance 74-26 created a municipal scholarship agency charged with the duty of contracting with existing accredited institutions. The municipal government (North Slope Borough) also sought ultimately to establish a local adult school in this remote village. The scholarship agency was so-named with this ideal in mind -- "Inupiat University of the Arctic." An inspection of the record on appeal reveals the mechanics of the scholarship agency as distinguished from its subcontractor schools.

The municipal scholarship commission was modeled upon state-level statutes. Alaska Statutes 14.776, 14.40.786(a), 14.40.796, and 14.40.796(b) /non-classroom training/. See also: Sheldon Jackson College v. State of Alaska, 599 P.2d 127 (Alaska 1979). At trial there was submitted no evidence to the contrary. That is, there was evidence that the North Slope Borough established a scholarship commission but not its own school.

There was no offer of evidence purporting to show that the municipal scholarship commission qualified or was about to qualify as a school under the guiding state statutes and regulations. Chapter 47 of Title 14, including Title 4, Alaska Administrative Code, Sections 45.010 and 48.010; North Slope Borough Ordinance 74-26 at Section 14.10.060(a) and Ordinance 74-26-4 at Section 14.10.070(a). These statutes provide that accreditation or official state approval are the prerequisites to operating a school in Alaska. The Alaska Appeals Court simply refers to the scholarship agency (or commission) and its subcontractors as "the school":

> IU /"Inupiat University" -- scholarship commission/ was incorporated during the summer of 1975 by the North Slope Borough and was governed by the Inupiat Council, which served, in effect, as a board of directors. IU's primary source of funding came from tuition grants provided to the school, on behalf of enrolling students, by the North Slope Borough, which had established a tuition grant committee for the purpose of reviewing and approving tuition grant applications.
>
> (Appendix A at 2)

The North Slope Borough was explicit in its definition of the scholarship commission:

> Payments of Grants. Payment of the tuition grants shall be made by an instrument in the amount of the grant paid to the order of the student and the private university or college in which he is enrolled or paid to the order of the student and any non-profit corporation which has contracted with an accredited university or college to provide higher education in the North Slope Borough.
>
> (Ordinance 74-26-4, at Section 14.10.080)
>
> Conditions of Grants. (a) Proceeds from grants may be used only for tuition for a postsecondary program of education

in the North Slope Borough, the successful completion of which leads to a degree or certificate from a college or university accredited by a regional or national accrediting association approved by the U.S. Office of Education.

(Ordinance 74-26-4 at Section 14.10.070(a))

Testimony at trial substantiated that the Borough's new scholarship agency was not itself a school but rather the Borough's instrumentality for making the actual scholarship awards. The commission, however, sought help from its subcontracting schools to eventually become an accredited school without their continued assistance and presence. The prosecutor cross-examined the former president of the municipal scholarship commission:

> Prosecutor. Mrs. Thompson, Inupiat University of the Arctic just more or less became the name adopted for the North Slope Borough post secondary program, is that correct?
>
> Thompson. Uh-huh.
>
> Prosecutor. That was the institution that was going to carry out the North Slope -- well, the post secondary education program for the North Slope....
>
> Thompson. Well, we were working towards our accreditation, our own -- without working with the other universities and that was the name that we were using.

(Transcript, pp. 1266-67)

The prosecutor's cross examination of the Alaska Post-secondary Education Commission director, Dr. Kerry Romesburg, disclosed the identity of two accredited institutions ("other universities") with whom the scholarship agency contracted:

> Romesburg. First, you must understand at the time that the Inupiat University had agreements with two other institutions, La Verne College and Sheldon Jackson College.

(Transcript, p. 1420)

3. The 1975-76 school year at Barrow.

The facts describing the 1975-76 academic year at Barrow break into three salient themes: (a) the relationship between the municipal scholarship agency and the University of Alaska, (b) curriculum and instructional activities, and (c) administrative upheavals at the University of Alaska statewide headquarters.

(a) The relationship. In connection with the municipal

scholarship commission, the University of Alaska hired appellant Ivey, a temporary Borough vocational counselor who was concurrently writing his doctoral dissertation at the University of California, Berkeley, on the same subject. The Alaska Appeals Court provided a summary description of Ivey's relationship with the scholarship commission but omitted Ivey's duties as a local school official (i.e., "45 CFR 102.6" -- Appendix A at p. 24):

> The extension center was not intended to duplicate the services offered by IU /"Inupiat University" -- scholarship agency/. As matters turned out, however, the operations of the extension center and IU became inextricably intertwined during the school year 1975-76, a development in which Ivey played a crucial role. * * * The extension center was not provided with a campus, office buildings or clerical staff. * * * IU also had no classroom facilities or campus, but it did occupy /not own/ a building in Barrow with office space for Vaudrin, Milne, Ivey and other clerical staff. * * * During the first semester of 1975-76, IU had a clerical staff which included, at one time or another, at least six people, all of whom worked under the supervision of Ivey and were paid by IU.
>
> (Appendix A at pp. 2, 3)

As a local school administrator, Ivey's duties in vocational education were spelled out in statutes and regulations that were typical of most every state. These guidelines were Alaska States 14.35.010, 14.35.020, 14.35.025, and Title 4, Alaska Administrative Code, Sections 51.010 (a) & (b), establishing the Alaska State Plan for Vocational Education. (Cf. Goss v. Brd. of Ed. of City of Knoxville, Tenn,. 305 F.2d 523 (6th Cir. 1962).

Specifically, Ivey's duties as a local vocational administrator or director were to:

> (a) Work with vocational staff, advisory committee, and other administrative staff in the planning, promoting, supervision, and evaluation of the program.
>
> (b) Take the initiative in conducting continuous studies of training needs, in revising and improving the curriculums, instructional materials and methods and in providing teacher in-service.
>
> (c) Recruit, recommend and training vocational staff members.
>
> (d) Understand the financial aspects of the program and the sources of funds which support it.
>
> (e) Become an acknowledged leader and advisor in the field of occupational education within the school system and in the community.
>
> (Alaska State Plan, Defense Exhibit 96 at pages 18 and 19)

At trial the University of Alaska's vocational education specialist, Dr. Samuel Rogers, testified that Ivey was professionally qualified to carry out the above-cited duties:

> Prosecutor. Do you -- let me ask you this first. Is Mr. Ivey qualified based on the documents you saw his educational background, if you recall....
>
> Dr. Rogers. Yes.
>
> Prosecutor. .... to run a vocational education program.
>
> Dr. Rogers. Yes, as I remember he had quite a background of both teaching and work experience.
>
> Prosecutor. And you've talked with Mr. Ivey on occasion, as you indicated?
>
> Dr. Rogers. Yes. (Transcript at p. 1340)

These above-cited "45 C.F.R. 102.6" duties had customary professional meanings, despite the obvious local Barrow handicaps of scarce qualified staff and facilities. (The legal profession codifies its duties in the American Bar Association's Code of Professional Responsibility and related Standards series.) Appellant Ivey supplied the Alaska Appeals Court with excerpts from some typical professional and scholarly publications to assist that court on the subject (August 9, 1979, Affidavit of Richard C. Ivey; cf. Hootch v. Alaska State Operated School System, supra, at 536 P.2d 803, 813). A brief account of a few of these professional customs and standards reveals the wide range of activities embraced in a local school as opposed to what the Barrow population was previously experiencing from commuting classroom lecturers on tour.

First, A Handbook for Bilingual/Bicultural Education Programs in Alaska (Alaska State publication) indicated on page 29 such activities as identifying and assessing the students' linguistic characteristics; and page 30 referred to steps needed to become "linguistically-culturally familiar" with the background of the students. (August 9, 1979, Affidavit) The University of Alaska, Fairbanks, 1968 publication College Orientation

Program for Alaskan Natives outlined some remedies for building self-confidence among the Eskimo population, of whom the school drop out rate was described as a staggering 60 per cent in elementary school and 52 per cent in high school, at page eight. (Ibid.)

Second, with specific focus on "45 CFR 102.6" duties, there was the 1973 publication of the U.S. Office of Education, entitled Guidelines for Identifying, Classifying, and Serving the Disadvantaged and Handicapped Under the Vocational Education Amendments of 1968. The Guidelines provided a checklist for numerous modifications and task categories to be used in identifying and responding to the students' general education deficiencies and passive and apathetic behaviors. (Ibid.)

Third, there was a 1975 scholarly publication entitled A Survey of Tasks Performed by Vocational Teachers. At pages 10 to 16, this research described 105 clusters of tasks generally associated with vocational education staff. These clusters were grouped into such categories as planning, execution, evaluation, management, guidance, school-community relations, student vocational organizations, professional role and development, and coordination of non-classroom training. (Ibid.)

(b) Curriculum and instruction. The municipal scholarship commission expected the University of Alaska to implement the above-described (Anchorage) approach to vocational training as opposed to competing with the municipal commission's contract operations. At no time did any party offer evidence purporting to show that the municipal commission contracted with accredited institutions other than the extension center to carry out the vocational training.

The Alaska Appeals Court summarizes this theme at Appendix A at pages 2 and 3:

> IU /"Inupiat University" -- the municipal commission/ was established to provide adult residents of the North Slope area with the opportunity to obtain education through a flexible curriculum encompassing traditional classroom

study, on-the-job training, work-study, individual tutoring and independent study. * * * The /University of Alaska/ extension center, by contrast, was a state-funded postsecondary educational program.... In that capacity, Ivey was to establish courses, hire instructors, and otherwise organizae and supervise a post-secondary educational program focusing on occupational training. The extension center was not intended to duplicate the services offered by IU. * * * During the first semester of 1975-76, IU had a clerical staff which included, at one time or another, at least six people, all of whom worked under the supervision of Ivey and were paid by IU.

Evidence introduced at trial supported the above scenario. According to the former president of the municipal scholarship commission:

> Defense counsel. Okay. Was it your understanding that there was to be some kind of joint staffing with Inupiat personnel and the University of Alaska?
>
> Thompson. Yes, that was the concept that we agreed to, but the University of Alaska would not come to Barrow or to the North Slope area and duplicate some of the programs that Inupiat University was offering. /Transcript, p. 1256/

This joint staffing, whereby the municipal commission advanced salaries for its contracting parties, was further evidenced by the typical financial statement which the mostly Eskimo staff received, dated December 31, 1975, according to Defense Exhibit 74:

> Your Inupiat University earnings to be reported for 1975 tax return will be shown on University of Alaska W-2 form for next year (1976 tax return), as follows:
>
> | | |
> |---|---|
> | gross earnings: | $2,800.00 |
> | social security: | $163.80 |
> | fed. withholding: | $410.00 |
> | state withhold. | $86.24 |
> | net earnings: | $2,139.28 |
>
> The University of Alaska will send you the W-2 form during January 1976.

In financing the curriculum and instructional activities, the municipal government (North Slope Borough) exercised a two-step approval process. At the first level a Borough finance committee ("tuition grant committee" -- N.S. Borough Ordinance 76-24-4 at Section 14.10.040) examined scholarship applications, for which only long-term Borough residents (i.e., Eskimos) qualified. The Borough finance committee approved non-classroom vocational training for purposes of the scholarship monies:

Defense counsel. Was it ever brought to your attention by anybody in Inupiat University a concept called work credit or on-the-job training?

Eugene Brower [Borough finance committee member]. Yeah, that was part of the thing that you're supposed to have, on-the-job -- you work and you get credit right along with your job.

(Transcript, p. 2339)

In carrying out the non-classroom vocational training, a formal arrangement was established called the North Slope Borough Apprenticeship and Training Committee (Defense Exhibit 43). A cross-section of Barrow employers, including the North Slope Borough, the municipal scholarship commission, and the local school district, were signatories to the non-classroom vocational training standards established under Title 29, United States Code, Section 50, and Title 29, Code of Federal Regulations, Parts 29 and 30. The United States Department of Labor officially approved the charter of the Apprenticeship and Training Committee on December 24, 1975. Appellant Ivey was the local training administrator, and this role matched his duties as extension center director (according to Dr. Samuel Rogers, the University of Alaska vocational education official):

Defense counsel. Would the extension center director be responsible for the type of course that was being taught in the classroom versus on-the-job training versus work credit?

Dr. Rogers. Yes. That would be his responsibility. He was the one living in the community and was hired because he had the qualifications to make these determinations [Transcript, p. 1329]

Therefore, the second step of municipal scholarship approval consisted of the local scholarship commission's expenditure of contract payments to its subcontractor schools and advances to the University of Alaska joint staff. Two handicaps served to frustrate University of Alaska prompt payment to the part-time vocational staff: standardized forms and frequent turnovers among the University of Alaska headquarters staff.

First, the standardized forms--the only ones available at Fairbanks--were for only classroom lecturer teaching professionals.

That is, the forms were designed for commuting professors and lecture courses as in mathematics, foreign languages, social sciences, and physical science (non-laboratory). These standardized forms required "computer manual" skills and need not be filled out by the actual person hired. According to prosecution witness Carla Roberts, a University of Alaska, Fairbanks, clerk who serviced such documents:

> Defense counsel. Okay. Now with regard to those -- to those -- parts of these forms that you've underlined and initialed, who would have knowledge of what to put in those particular blanks you filled in?
>
> Roberts. Any person who understood the computer system and had a computer manual would be able to do that.
>
> Defense counsel. So you would need those two things, is that correct?
>
> Roberts. That's correct.
>
> Defense counsel. You wouldn't expect an instructor to have that kind of knowledge though, would you?
>
> Roberts. No.
>
> (Transcript, pp. 495, 496)

Another prosecution witness, Ms. Roberts' supervisor, Jane Demmert testified similarly:

> Prosecutor. Do you recall what you had to do with pushing those payroll forms through or facilitating those instructors getting paychecks?
>
> Demmert. Yes. In order for instructors to be paid from an extension center the papers to hire an instructor would be filled out by the extension center coordinator, they would then be sent to our office. We would review them then. We would sign off on them approving them and then they would go from there into the university system and in that way a paycheck would eventually be issued.
>
> (Transcript, p. 794)

The second barrier to hiring, let alone paying, the mostly Eskimo vocational staff in Barrow was the frequent turnover of key personnel at the Fairbanks headquarters. Within six months of the hiring of appellant Ivey, the University of Alaska, Fairbanks, had replaced his supervisors two times. Defendant's Exhibit 69 shows a July 8, 1975, letter hiring appellant Ivey, and his then-apparent supervisor was Assistant Dean, Mildred

Matthews. She was replaced shortly thereafter, and administrative practices and procedures suffered in spite of the desperate needs of populations as in Barrow.

Prosecution witnesses Demmert (supra) and Ramos commenced their administrative posts after mid-year; Demmert described their predecessors and lack of transition:

> Defense counsel. Mrs. Demmert, could you tell the jury who -- before you held the job that you held at that time, did you replace somebody else or was there not anybody in your position or....
>
> Demmert. Well, the whole division of Rural Division Affairs was very new. There had been a man, whose name is Frank Darnell, who was the acting vice president of rural education from July until the end of December of 1975. And as far as I know he had -- he was also the head of another institute at the university. And additionally he had helping him in his job as the acting vice president his secretary from his other job. And then a man named Fred BigJim was working with him, with Frank Darnell. So then when Mrs. Ramos was appointed, Mr. Darnell's secretary returned with him to his other job, so that there was not anyone who had actually ever been in a professional backup position on the Fairbanks campus to the vice president for rural education, so that would have been pretty much a new position.
>
> Defense counsel. Okay. When you came in, did Mr. Darnell provide your office with any guidelines or standards for carrying on adult vocational education?
>
> Demmert. No. In fact, when Mr. Darnell left office, as I recall, I think he may have been on a vacation for an extended period of time, so that when Mrs. Ramos came into the position, we were using the files that were available as a major source of information to provide continuity between Dr. Darnell's administration and Mrs. Ramos' transition into that role.
>
> (Transcript, pp. 815, 816)

Although the University of Alaska appointed Dr. Samuel Rogers to oversee vocational education, his expertise and assistance in the hiring, paying, and supervising local vocational staff was blocked on the grounds of race:

> Defense counsel. Back in the fall of 1975 what were you called then?
>
> Dr. Rogers. I believe at that time Elaine Ramos was our vice president. She called me the Director of Vocational Education.
>
> Defense counsel. What did Frank Darnell call you when he was acting vice president of rural education?
>
> Dr. Rogers. He called me the coordinator of occupational education, I believe.
>
> (Transcript, pp. 1314, 1315)

Defense counsel. Were you permitted to come up to Fairbanks or to Barrow and evaluate Mr. Ivey's program?

Dr. Rogers. No, I wasn't. I wasn't permitted, no.

Defense counsel. Why were you not permitted?

Dr. Rogers. Well, that's probably a question you should ask Elaine Ramos. At that time she wanted to be -- have REA /Rural Educational Affairs/ represented by natives in the field. And it was her feeling that not being a native that I wouldn't be able to communicate well enough with the native to understand their needs and help develop programs.

* * *

(Transcript, p. 1317)

Defense counsel. Eventually though you -- later on you did travel to some places, did you not?

Dr. Rogers. Yes, later on Elaine Ramos was being highly criticized for not producing. And so when that started to happen then she did 180 degree turnabout and literally insisted that I get out into the field and spend some time. So I spent a lot of time in Kotzebue and we put together some pretty successful programs there. And one of the programs was in the training of people to be electricians. We worked with the apprenticeship group out of Anchorage and we conducted half of a program in Kotzebue and the other half in Anchorage. And out of that program 11 of the people are still on the job today. So it was a highly successful vocational program.

(Transcript, pp. 1319, 1320)

* * *

Defense counsel. Okay. When Mrs. Ramos became vice president of Rural Educational Affairs in 1976 were there any guidelines, standards and specifications set down by her at that time?

Dr. Rogers. Not to my knowledge.

(Transcript, pp. 149, 150)

In summary, the arrangement between the municipal scholarship commission and the University of Alaska was that the latter implemented the vocational training (i.e., no duplication of programs). However, this arrangement was frustrated in practice by the University's standardized forms, which remained unmodified while various University administrators shifted job posts. Two crucial facts reinforce Ivey's evidentiary showing that, in spite of these problems, the municipal scholarship commission was a contracting agency and not a school and that the University knew it.

First, prosecution witness Ramos personally reviewed student records during October of 1975 when she was an official

of a subcontractor of the municipal scholarship commission:

> Prosecutor. You had been up to Barrow before had you not, when you were with Sheldon Jackson /College/?
>
> Ramos. Yes, I'd come up on October of 1975 and I believe that was the first time I met Mr. Ivey. I came up here with /Sheldon Jackson President/ Dr. Charles Bovee and we stayed with Dr. Milne's -- at Dr. Milne's house while we were here -- I think two days. Dr. Bovee was concerned about the student records. Sheldon Jackson felt that student records were not properly recorded and Sheldon Jackson was very much concerned because they were responsible for the tuition equalization funds. And that was the specific reason for that trip was to encourage better student records so that the post secondary commission and the state would be satisfied as far as student equalization funds were concerned.
>
> Prosecutor. Well, ...
>
> Ramos. That was the specific purpose for my October trip of 1975.
>
> (Transcript, pp. 877, 878)

Second, at no time did any party offer evidence purporting to show that the disputed Barrow vocational staff (other than Ivey) possessed professional teaching qualifications, including those certificates, credentials, and prerequisites specified by the Alaska State Plan for Vocational Education (Defendant's Exhibit 96 at pp. 21-23 -- Section 1.33) and Alaska Statutes 14.20.010, 14.20.020(b), and 14.20.370. In fact the documents appellant Ivey did submit for paying the vocational staff salaries disclosed patent absence of professional teaching qualifications. See Plaintiff's Exhibits 3, 20, 22(e), 28(d), 29(d), 33(d), 45(d), 48(d), 57(d). The chances were remote that the mostly Eskimo vocational staff would be hired or paid for any instructional capacity, according to the Mrs. Ramos' supervisor, the former University of Alaska President, Robert W. Hiatt:

> Defense counsel. Going back to your answer to Mr. Gullufsen's /prosecutor's/ question, on the competency of people to indicate whether they taught courses. What if those people were, you know, instructors were of teacher aide type competence or were people of limited English speaking ability themselves?
>
> Dr. Hiatt. I don't recall we hired any instructors of that general category. I doubt if we would have.
>
> (Transcript at p. 138)

In light of all these factors, it was Ramos' position at trial that appellant Ivey had local administrative responsibility to make academic judgments or evaluations of student progress:

> Defense counsel. Do you know what kind of grading method would be used for on-the-job training work credit program?
>
> Ramos. As I recall it -- it depends on the -- on the instructor and in the Rural Educational Affairs, it depends upon the coordinator. For example, Dr. Don Gatzgy at Nome Community College might use one system and Ed Bonard in Kotzebue might use another system and Richard Ivey at Pt. Barrow might use another system.
>
> (Transcript, pp. 938, 939)

The significant issue is whether, under appellant's stewardship of Barrow adult vocational training during 1975-76, curriculum and instruction activities added up to a zero. Only a few references to the record are necessary to make a contrary showing. As to the Fall Semester 1975-76, prosecution witness Steve Brown testified:

> Prosecutor. You went to classes as well as got on-the-job credit for on-the-job training?
>
> Brown. Yes.
>
> Prosecutor. Did you ever sit in on -- or did you ever substitute for -- or sit in for Mr. Ivey on those Inupiat classes, the business package?
>
> Brown. This package? Yes.
>
> (Transcript, p. 675)

Prosecution witness Ethel Ahngasuk testified similarly:

> Defense counsel. Did you ever see Mr. Ivey meet with any students, counsel with any students there in the office when you were there?
>
> Ahngasuk. Some, for accounting and bookeeping.
>
> (Transcript, p. 1160)

As to the Spring Semester 1975-76, prosecution witness Fran Tate related that the municipal scholarship commission contracted with the State of Alaska to use federal Comprehensive Employment and Training Act monies to finance out of town student travel to Barrow for attendance of business classes. Appellant Ivey in turn had the contract responsibility to supervise operations.

Prosecutor. And then Inupiat University in turn hired Ivey to over or manage the CETA ....

Tate. Yeah, kind of coordinate the project, yes.

Prosecutor. When did it actually start? What was your participation?

Tate. Well, it started in about mid-June, but at that time Dr. Milne and Mr. Wright and I were working on the NARL /Naval Arctic Research Laboratory/ Navy bid and we spent quite some time in Anchorage and did the final finishing touches in Portland. And I came back, which I believe was June 29 or -- about that -- June 28th or 29th, I immediately started teaching the Office classes, calculators, Xerox machines, typing, calculators and so forth, and driver's training.

Prosecutor. Who else was an instructor for....

Tate. For the first three or four days Jim Culbreath helped me with the driver's training class.

Prosecutor. And Mr. Ivey?

Tate. No, Mr. Ivey did not.

Prosecutor. Well, had Mr. Ivey been instructing or teaching up until you took over?

Tate. No, I un-- understood that he was there for the opening session, teaching....

(Transcript, p. 1013)

In addition, appellant Ivey took the initiative in establishing student vocational organizations, whereby students could experience practical learning activities.

Prosecutor. What do you know about the student corporations that were set up?

Tate. Okay, that's the tanning company and those?

Prosecutor. Well....

Tate. Those student corporations or the student enterprises?

Prosecutor. Well I'm referring to student corporations now.

Tate. I know that they were set up for the student body of Inupiat University because I had to make a list of all the Native students and go their number -- their identification from AFRC /Arctic Slope Regional Corporation/, so that they would be entitled to stock in these companies providing they were a student.

Prosecutor. Do you know what the students were told about the student -- the student corporations?

Tate. I don't know that the majority of the students were told this was happening. It was something kind of internal. Edith Nashoalook and Steve Brown and those in the office knew what was jelling -- we were trying to get them into

the tanning business and the students would own these corporations. They would be managing them. Like -- you know, like the local candy store in the high school is -- is.

(Transcript, pp. 1002, 1003)

Appellant Ivey participated in arrangements whereby the municipal scholarship commission purchased local staff housing. Ivey's role was as agent in assuming credit responsility for a Farmer's Home Administration mortgage which the commission was legally barred from assuming. Included in the arrangements were that the local school district would make the dwelling habitable.

Prosecutor. Did there come a time when you learned about the possibility of renting what's called the Brower house here in Barrow?

Dr. Anttonen /North Slope Borough School District Superintendent/. Yes, there was a house -- at that time I owned as we -- we felt was owned by Inupiat University, and it was available. It had been Johnny and Joy Brower's house. It was unfinished. We were in -- desperate need of housing for staff and I contacted the /Inupiat/ University regarding availability of that house.

* * * (Transcript, pp. 770, 771)

Prosecutor. Without waiting for signing the lease, your person had gone ahead and moved in and was renting the Brower hou e?

Dr. Anttonen. That's right. We fixed it up. By fixing it up, we carpeted it and then completed the house, finished the house. And that -- at that point in time, I'm speaking of Mr. Milne, I kept saying, you know, let's execute this lease. I directed that David Stauffer not pay any rent until we could execute the lease, however he intended to pay the rent at some point in time. When we could never get the lease through, I directed David and -- Fred to determine what amount had been expended in fixing it up, how much leasing from the time Fred entered until the time he left would be -- we deducted the amount for fixing it up against that amount of rent and then we made a payment to Inupiat University for the remaining amount. And I can't -- I wouldn't know exactly what the amount was.

(Transcript, p. 774)

Prosecution witness Joy Brower testified regarding Ivey's role in the Farmer's Home Administration mortgage:

Prosecutor. Were they going to assume a loan or a mortgage that was on the property?

Brower. Yes they were to assume the FHA balance due on the home.

(Transcript, p. 1116)

Prosecution witness, Steve Brown, testified that he notarized appellant Ivey's conveyance of his interest in the municipal scholarship commission's "Brower" house shortly after the Browers conveyed to Ivey and the chief executive of the municipal scholarship commission. (Transcript, pp. 713-716)

The importance of the "Brower" house lay in the scholarship commission's need for real property assets in support of its eventual bid for school status and for staff housing for its subcontractor teaching professionals. The source of the primary cash financing derived from the University of Alaska reimbursement for municipal scholarship commission salary advances to the joint staff.

In summary, though the University of Alaska's Barrow vocational staff was handicapped by standardized forms (alien to vocational training in the bush) and Fairbanks job turnovers, key University officials (i.e., Ramos) knew the difficulties of the scholarship commission's contract operations and that the vocational staff was patently underqualfied for professional level assignments. Nonetheless, real curriculum and instructional activities took place during both Fall and Spring Semesters of the 1975-76 school year.

(c) Administrative upheavals at Fairbanks headquarters. The upheavals resulting in the criminal charges against appellant Ivey were an outgrowth of the Fairbanks campus job instability. At the highest levels the University officials were aware that Barrow Eskimo participation rested upon standardized forms stressing conventional success not Native involvement. The then-University President was predisposed to no Native hires. Equally important, the Barrow scholarship commission was engaged in a campaign to unseat the University of Alaska over a $12 million management contract at the United States Naval Arctic Research Laboratory located at Point Barrow. The resultant clash produced more job turnovers at the Fairbanks headquarters.

First, the then-University of Alaska President, Robert W. Hiatt, recognized the Barrow population was unlikely to relate to conventional classroom lecture instruction; however, the hiring of Eskimo instructional aides was not a priority.

> Defense counsel. In developing an extension center for a place like Barrow, Dr. Hiatt, is it true or is it not true that the people that you would be servicing up there would have a -- an impairment or limited ability in the use of the English language in regard to adult vocational education?
>
> Dr. Hiatt. I think that would be true of any bush area in Alaska.
>
> (Transcript, p. 123)
>
> Defense counsel. Going back to your answer to Mr. Gullufsen's /prosecutor's/ question, on the competency of people to indicate whether they taught courses. What if those people were, you know, instructors were of teacher aide type competence or were the people of limited English speaking ability themselves?
>
> Dr. Hiatt. I don't recall we hired any instructors of that general category. I doubt if we would have.
>
> (Transcript, p. 138)

The former University of Alaska Vice President for Rural Educational Affairs told the grand jury:

> Grand juror. Do you feel that the Native people in Barrow -- young girls, and fellows, taking these kind of courses, would they ever show up for them if they had the opportunity and they were really --somebody was pushing them and trying to encourage them to take these courses? Did they have the background in high school and so forth to take university courses? Do you feel they -- do you feel that it would be a real hard job, or -- or would some show up for these classes, or ....
>
> Ramos. I would feel that it would take much -- Barrow itself -- I'm talking about specifically Point Barrow and the people I know, and the young people that I know, it would take much counseling and real efforts to push them to show up for classes at regular basis.
>
> (Grand Jury Transcript at pp. 468, 469)

The Alaska Appeals Court cites the apparent fact that no University of Alaska resources were forthcoming to remedy the lack of conventional successes: "The extension center was not provided with a campus, office buildings or clerical staff." (Appendix A at 3)

Prosecution witness Fran Tate testified how scarce scholarship commission resources were expended on costly air travel and lodging in a bid by three commission staff members to have

the commission replace the University of Alaska at the United States Naval Arctic Research Laboratory at Point Barrow. Page 23 supra cites lengthy trips to Anchorage and Portland. Prosecution witness Fran Tate was working for the University of Alaska's N.A.R.L. chief executive during the scholarship commission's planning stages of the $12 million management contract proposal:

> Defense counsel. When were -- you were working for Dr. Danner at NARL up during this time that you were formulating this proposal for the ....
>
> Tate. When we were thinking about it, not when we actually got into the package, no.
>
> Defense counsel. Okay.
>
> Tate. I -- the last time I'd worked out there was about the second week in May for Commander Shaus, as a secretary.
>
> Defense counsel. Okay. Well, who lets the contract for the -- for NARL?
>
> Tate. The navy, in Washington, D.C., Office of Naval Research, Arlington, Virginia.
>
> Defense counsel. Would the local commander up here for the navy have anything to do with it?
>
> Tate. No, not really. That is not his department. He's the commander of the base, but not in contracts.
>
> Defense counsel. He couldn't make a recommendation that the navy might follow back in Washington? He wouldn't be responsible? They wouldn't listen to him if he made a recommendation or something?
>
> Tate. I suppose. I don't know what the internal ....
>
> Defense counsel. All right.
>
> Tate. .... of the navy. Commander Brennon was in charge in Washington, D.C. at that time.
>
> Defense counsel. How big of a contract was that?
>
> Tate. Ah hmm, 12 million. I think that's close, 9 to 12 million. I think we bid less than that.
>
> * * *
>
> Defense counsel. Who was gonna put up the capital or the money up front?
>
> Tate. I have no idea. I -- I -- I was not involved in the financial end of it. I helped put together manpower ....
>
> Defense counsel. Okay.
>
> Tate. .... organizational charts and so forth.

(Transcript at pp. 1030-1032)

What brought the costly N.A.R.L. bid to a halt were the equally high risk personal ventures of the chief executive of the municipal scholarship commission. In Milne v. State, 607 P.2d 360 (Alaska 1980), appellant Ivey stepped forward to notify police authorities regarding the commission executive's apparent personal pocketing of other people's monies.

The upheaval at the Fairbanks campus was that top University officials closed ranks and enforced conventional (classroom lecture) instructional measures without exception. Although appellant Ivey was not accused of pocketing other people's monies, Milne v. State, id., served as the University's vehicle for attacking all Eskimo participation at the extension center as part of the Milne "fraud." Where Ivey signed for teacher-aide vocational staff, such signing for his subordinates constituted forgery based upon "fake training." Where Ivey applied for part-time wages and salaries for the mostly Eskimo vocational staff, such application gave rise to the charge of obtaining money under false pretenses ("fake training"). (See Grand Jury Indictment at Record on Appeal, pp. et seq.)

Appellant Ivey was dismissed shortly thereafter, but no criminal charges were filed. When a state level review agency conducted proceedings declaring Ivey's vocational staffing and instructional activities a fiction, then he filed federal and state civil rights complaints in a timely manner. About three months later the Fairbanks grand jury indicted appellant on 26 counts of forgery and false pretenses (April 7, 1977).

Testimony before the Fairbanks grand jury reveals awareness by University officials that only conventional instructional measures (i.e., Native participation unlikely) applied to Ivey's tenure at the Barrow extension center. Prosecution witness Elaine had just been demoted:

THE COURT: And your profession?

Ramos. I'm working with the Anchorage Community College.

THE COURT: Thank you. Mr. Backstrom? /Defense counsel/

Defense counsel. Mrs. Ramos, were you vice president for Rural Education Affairs in January -- in January of '76?

Ramos. Yes, sir.

Defense counsel. When were you appointed to that position?

Ramos. January, I think of '75.

Defense counsel. You mean December of '75?

Ramos. Yes and I started work on January.

Defense counsel. Okay. And when did you leave that position?

Ramos. The following year, January.

(Transcript, pp. 205, 206)

During her April 6, 1977, Fairbanks grand jury testimony, former University of Alaska Vice President Ramos contradicted her subsequent trial testimony on non-classroom vocational training (supra at p. 21):

> Grand juror. Did you ever talk to Mr. Ivey about classes that weren't in the classroom -- wouldn't be held in the classroom, say, in the business area, but yet the students could receive some sort of training. They might not even be aware that they were in the class?
>
> Ramos. No, sir. I do not remember any conversation of that sort at all. We questioned a lot of the -- the Inupiat culture, Inupiat dancing, and we had words about that, because he /Ivey/ wanted to give credits for that. And like I said, until a foundation curriculum had been built, there was nothing we can measure, to give credits. We had words about that. But, I do not remember that type of conversation at all with Mr. Ivey.
>
> Grand juror. The classes that you wanted him to teach would have been taught in the classroom?
>
> Ramos. Yes.
>
> Grand juror. With a teacher and students all together in one place?
>
> Ramos. With the required classroom hours.
>
> (Grand Jury Transcript, p. 472)

In his successful May 19, 1977, opposition to appellant Ivey's motion to dismiss, the prosecutor noted the significance of Ramos' above-cited testimony. See Record on Appeal (p. 73):

> Any representation to the Grand Jury by the defendant that Hiatt and Ramos knew of the non-existence of the fictitious classes is contradicted by Ramos' testimony to the Grand Jury and was obviously not believed by the Grand Jury.
>
> (emphasis in original)

At the time of Ramos' April 1977, grand jury testimony, former University of Alaska Robert Hiatt had just been demoted:

> Defense counsel. You're still employed by the University of Alaska?
>
> Dr. Hiatt. That's right. Right.
>
> Defense counsel. What is your job description?
>
> Dr. Hiatt. I'm coordinator of Marine Sciences.
>
> Defense counsel. Okay. Now you were President of the University of Alaska during what period of time, sir?
>
> Dr. Hiatt. July 19, '73 to mid February in '76.
>
> (Transcript, p. 114)

Ramos' former chief aide, Jane Demmert, went so far as to allege fraud where classroom lecture courses failed to match the campus catalog (cf. pp. 8, 17 supra):

> Defense counsel. Okay. However, if a person took the coding out of that catalog, or the Anchorage catalog, and that wasn't the proper coding -- coding for the course that was being taught, how could you evaluate that? I -- in fact, there is no way to evaluate it, is there?
>
> Demmert. Well, then you would have fraudulent instruction.
>
> (Transcript, p. 855)

The prosecution followed this theme while concurrently revealing the racial character of instruction spared from criminal charges. Dr. John Anttonen was a white professional who was a classroom lecturer for Barrow public school teachers in a Fall Semester 1975 class in teacher training. In contrast, the municipal scholarship commission was characterized as the repository for "Native curriculum," that is, those curriculum and instructional activities which failed to match that of Dr. Anttonen.

The prosecutor's March 24, 1977, statement to the Fairbanks grand jury described Dr. Anttonen:

> MR. GULLUFSEN: The first witness who will be testifying will be John Anttonen, and I'm going to preface or I'm going to indicate to you what I expect his testimony to be, simply because I think it's -- his situation is distinguishable from all the rest of the instructors. And that's why I'm presenting him at this time. I expect

his testimony to show -- and again it's his testimony and what you hear that's important and should be considered, not what I say. But I expect his testimony to show that he, in fact, did teach a class, and, in fact, is the only one who did validly teach a class at the University of Alaska and fill out the paperwork and get the check and sign it. So, I'm going to present him first. And you can listen to his testimony. If it does, in fact, indicate that, you can compare it with the testimony of the rest of the alleged instructors. Let's start with Mr. Anttonen then.

(Grand Jury Transcript, p. 19)

Dr. Anttonen testified that:

Prosecutor. What is your occupation?

Dr. Anttonen. I'm the school superintendent for the North Slope Borough School District.

* * *

Prosecutor. Have you ever taught a course for the University of Alaska while in Barrow?

Dr. Anttonen. Yes, I have.

Prosecutor. What course was that?

Dr. Anttonen. It was a course -- a graduate course in education called, "A Criterion References Approach to Learning Disabilities."

* * * (Grand Jury Transcript, p. 19)

Prosecutor. And how did your teaching the course come about? Did somebody ask you to do that, or did you volunteer and put it together yourself, or just what?

Dr. Anttonen. I have a doctorate in Special Education from the University of Oregon, and several of my teachers were interested in learning disabilities and criterion referenced approach. I discussed the matter with the University of Alaska, and they noted that I would have to go through the extension course -- extension program in Barrow. I contacted the extension person up there; Mr. Ivey, and stated that I wanted to teach a course, and the title of the course was, "A seminar: A Criterion Referenced Approach to Learning Disabilities." I made arrangements to do so. For example, I filled out a course description outlining the texts I would use, and the tests that would be given and objectives necessary to meet and get credit for the course; how many times you would meet and what topics we would cover. And I turned this in through him to the University of Alaska.

(Grand Jury Transcript, p. 20)

Although appellant Ivey completed Dr. Anttonen's "computerized" University of Alaska forms (supra, p. 17), no forgery or false pretenses allegations were ever suggested:

Prosecutor. Okay. Is the -- your signature also appear on that (indiscernible)?

Dr. Anttonen. Yes. Once again, that doesn't really look like my signature, and I can't remember signing it, although the information's correct. I have a doctorate of education and it's from the University of Oregon. And I am a Presbyterian and a caucasian.

* * * (Grand Jury Transcript, p. 23)

Prosecutor. That also -- does that also purport to have your signature on it?

Dr. Anttonen. It does. However, again -- yes, it -- it does. And the information is essentially correct there except I -- it doesn't look like the document I've signed. And my name is misspelled under name, that's A-n-- again, A-n-t-o-n-n-e-n-, my name is A-n-t-t-o-n-e-n.

* * * (Grand Jury Transcript, pp. 23, 24)

Further, though Dr. Anttonen might omit classroom lecture hours from his instruction, in practice, no allegations of deficiency were ever suggested:

Prosecutor. Mr. Ivey, while you were teaching this course that you taught the fall/winter of '75, did he ever come to see how the course was going and check-up -- check with you about....

Dr. Anttonen. He came once. I think it would be the second meeting. And we were getting the forms filled out properly for the individuals that took the course. You know, there is a -- some forms that you fill out when you apply to take a course at the university. And I believe he may have come once towards the end of the course. We met, generally, once a week, but because of my travel schedule at times it might be two weeks till meet. He came once towards the end of the course and I believe he discussed the course with me at least once in my office -- once or twice. I showed him some of the projects that the students in the course were completing.

(Grand Jury Transcript, p. 31)

At trial the prosecutor argued most vigorously that non-classroom vocational training was fraudulent. The University of Alaska vocational instruction was at issue, not that of the other schools who subcontracted with the municipal scholarship agency:

Prosecutor in closing argument. Mr. Ivey would have you believe that credit falls out of the sky whenever he has a cup of coffee with somebody. Well, that'd be fine, if that was all that was involved. He's getting money for that; he's getting money for that, and he's calling it on-the-job training. There's no training going on. If somebody is working as a secretary in an office here in Barrow, they know how to type; they're doing clerical work, they know it.

(Transcript, pp. 2918, 2919)

With the trial court's permission, the prosecutor attacked all prospects of instruction that students may have participated in, but no definition of instruction was offered beyond that of classroom lecture:

> Prosecutor. Well, your Honor, because before the defendant got on the stand I think we were justified in assuming that we could not on -- we could ask the instructors if they taught the class, who they taught it to, and so forth and we did that. It wasn't until the defendant got on the stand and told us, "Well, these were just helpers" and that often he was the one who had contact with -- he set up a job training program or that he had tutorials with them, or even classroom situations, until then there was no defense that these teachers were not the instructors of the class. And now in order to rebut that part of his defense that these classes were somehow so nebulous that the instructors would not know that they had taught it, in order to rebut that kind of testimony from the defendant, we have to rely on the students now.
>
> (Transcript, pp. 2243, 2244)

By this time the University of Alaska ceased having local training staff in Barrow:

> Defense counsel. After Mr. Ivey left the Barrow Extension Center was somebody else appointed to take his place?
>
> /Jane/ Demmert. At that -- at the time of his departure which I believe was in the late summer of '76, there was no one appointed and then last spring /1977/ I was asked to serve in that capacity in addition to my regular responsibilities, so that there would be some way for there to be a contact point.
>
> (Transcript, p. 828)

In summary, the top administrators at the Fairbanks campus knew that the standardized classroom lecture forms (based upon computer codes) would easily result in Eskimo non-participation among the Barrow population. When municipal scholarship commission officials undertook to unseat the University of Alaska at the Barrow Navy installation, the personal misfortunes of a scholarship commission executive triggered a massive state-level attack on the Barrow vocational training operation. Though University of Alaska executives lost their jobs in the process, the entire Native participation in the University's extension center was labeled a fraud (i.e., "non-classroom instruction"); the white classroom lecture instruction, similarly situated suffered no criticism.

4. Aftermath: pre-trial proceedings. In carrying the the criminal prosecution, the state undertook to appoint counsel for appellant Ivey and to respond to Ivey's request for exculpatory evidence. In short, the state appointed Ivey's retained counsel and just days prior to the scheduled trial forced a substitution of counsel sua sponte. Because the prosecution targeted the entire Barrow vocational school operation for fraud charges, Ivey made numerous specific requests for evidence in the possession of the police. These requests were denied.

First, appointed counsel occurred in the trial court, after open deliberation and consideration of opposing viewpoints. With full knowledge of anticipated attorney and witness fee arrangements at public expense, the trial court appointed Ivey's previously retained counsel. The following are the June 6, 1977, excerpts of testimony on appointment of Ivey's counsel:

> THE COURT: This is case number 77-787, State of Alaska versus Richard Ivey. Mr. Ivey is present in court, Mr. Gullufsen appears for the State, Mr. Erwin is here for the defendant and Mr. Backstrom. Did you have -- is this a -- a conflict -- I'm sorry, not a conflict, but is this a -- don't you have something else someplace Mr. Backstrom? Didn't you say wouldn't be here?
>
> /Public defender/ Backstrom. I -- that's concluded already.
>
> THE COURT: Oh fine. All right.
>
> Backstrom. My client did not show up for that hearing.
>
> THE COURT: Apparently there are several matters that should be disposed of in this matter. And I support that the Court should first consider with regard to the continuation or, who is going to be counsel for Mr. Ivey.
>
> /Lawrence/ Erwin. Your Honor, I appreciate you weren't present at the arraignment and neither was Mr. Gullufsen, but at that time we presented a motion to have myself appointed as counsel. And Judge Blair at that time ordered that we -- that Mr. Ivey support (sic) himself to Intake Pretrial Services and that if he in fact qualified for assistance in this case a public defender would be appointed, and that's what has been accomplished to date.
>
> THE COURT: That's part of it.
>
> Erwin. Well, that's what Judge Blair said.
>
> THE COURT: I know. But then that -- that isn't -- that isn't the full matter though.

Erwin. No. I just wanted to advise the Court of what his ruling had been or what he had stated on the record to this point.

THE COURT: Unless I'm thinking of the wrong case -- you did enter into the representation of Mr. Ivey without qualification, isn't that correct?

Erwin. I originally filed a limited entry of appearance and then I entered a general entry of appearance, Your Honor, because the time, of course, was running to get motions in, and we had not received a determination from Judge Blair whether Mr. Ivey had qualified or not for Public Defender assistance.

THE COURT: Well, I assume right now that we're probably discussing or arguing -- the Court has to make a ruling on the motion -- your motion to withdraw, Mr. Erwin?

Erwin. Yes, or to substitute actually I guess it should have been more properly captioned.

THE COURT: Do you have anything further that you want to say then?

Erwin. Not unless there's something else the Court desires.

THE COURT: Mr. Backstrom, do you have any position to take on....

Backstrom. Yes, I would ask the Court to not permit Mr. Erwin to withdraw as counsel in this case. He's undertaken some substantive work in filing motions, issuing subpoenas, and there's been a considerable amount of money paid by Mr. Ivey to Mr. Erwin. I was unaware of the arraignment. I didn't -- I don't know what took place at the arraignment. The correspondence that I received from Mr. Ivey, and to some extent Mr. Erwin, indicated that actually Mr. Ivey desires Mr. Erwin to handle this case. And I think he would, because Mr. Erwin has been working on it for probably a year, and is aware of the case. We're not aware of the case, don't know anything about it, that they want the Public Defender in the case to offset costs that would naturally arise, witness payments. Of course they could get the State to serve subpoenas if they - that pro - wouldn't be a problem -- but to pay witnesses, to transcribe grand jury tapes and to foot other types of costs that would arise during the case. And that was the main purpose as I saw it for our entering into the case. And I would ask the Court to - apparently there was some thought that we could be some - we would somehow pay for Mr. Erwin's services out of monies that we might have had. Now years ago before the legislature changed the law, that was true, when we determined conflict cases, and whatnot we had funds available to do that sort of thing. We no longer have those funds. Those funds are now taken over by the court system. The court has funds and we don't have any. I would ask the Court to (indiscernible) the case as such with Mr. Erwin's work of approximately a year and the money that's been paid to him already by Mr. Ivey that it would be very, very detrimental to Mr. Ivey to this case and perhaps to the cause of justice in this case if Mr. Erwin were permitted to withdraw. And that actually he should be continued in the case, that the Court funds -- that Mr. Ivey is not out of money and Mr. Erwin and Mr. Ivey find it impossible to continue

at this point -- that court funds be used to offset the investigation and perhaps compensate Mr. Erwin at the hourly figure. I think it's rather law, but perhaps something could be worked out on that figure, that those funds be used to provide for a defense for Mr. Ivey at this time.

We simply don't have the resources to go to trial on the 27th of June even if Mr. Erwin were allowed to withdraw. So this would be the second problem. I would think he would want to cover this in two stages probably whether or not Mr. Erwin stays in the case or number two, whether we would go to trial. We would find it quite difficult. I would also say though that they do kind of overlap and that we find it extremely difficult to go to trial on the 27th. We couldn't go to trial on the 27th. Don't even have a lawyer to go. And the Court could enter all the orders it wanted and we -- put people in jail whatever -- and we wouldn't be up there, because we don't have anybody. Bu/t/ even if it was continued to a short time thereafter, we'd still find it difficult, because we would like to have the opportunity to spend some time on the case -- the State has prepared this case from approximately a year or close to a year, and Mr. Erwin has worked on it for that time -- we'd find that our period of time would be much too short under the circumstances.

I do think that the problems do intermess to a certain extent. And that actually the -- if Mr. Erwin - I think the determination of whether he's gonna represent Mr. Ivey or not, should have occurred a little bit earlier. And I don't know -- I'm not laying the blame on anybody. It'd be just a series of steps that got us to the position we are now. Mr. Erwin in good faith could very well have felt that since the Court was not acting on his motion to have us appointed that he was commanded to do some things, which he did. By the same token the Court could have felt that by filing motions and what not that he was gonna be attorney of record. At lease we felt that that was true.

One of the problems that we don't like to see is two attorneys representing one particular defendant. That's what it appeared we were getting into here. Mr. Ivey though, as my understanding does -- has never found any fault with Mr. Ivey's representation and would like to have him continue to represent him because of his knowledge of the case. And I think that ought to be the determining factors in this particular matter. Thank you.

THE COURT: Thank you, Mr. Backstrom.

* * * (Transcript, pp. 22-27)

THE COURT: Mr. Erwin, anything further?

Erwin. No, Your Honor. I think that just about says it all, except for the fact that we do have numerous subpoenas -- which I think some 30 plus or 40 -- nearly 40 subpoenas, which I have not issued or had go out because I simply had no funds to do it. So I think trial date is not a great issue, because I don't think I could be prepared to go to trial on the 27th either and get the subpoenas out on time and prepared. And I also, Your Honor, would be happy of course, to assist the Public Defender in any way they need to get themselves ready for trial.

THE COURT: Well, for whatever reason that the Public Defender was appointed, and I believe I can understand the movement behind that, I find that that was in improvident granting of Mr. Eriwn's motion to withdraw as counsel and will not be granted.

The district attorney -- I'm sory, the public defender however will be permitted to withdraw if that order hasn't already been -- if that hasn't already been signed. Now -- then this case is set for trial on the 27th and -- in Barrow. * * *

(Transcript, p. 29)

* * *

THE COURT: Mr. Erwin?

Erwin. Well, Your Honor, at this point I find myself in a very difficult position. You've denied my motion to withdraw or substitute the Public Defender. Mr. Ivey has sent the Public Defender and I carbon copied myself a list of some - like I earlier informed the Court about 40 different witnesses that he wishes to have subpoenaed. We have absolutely no money with which to tender witnesses fees and air fare for all those witnesses after of course Mr. Ivey has been found indigent. So just --I can only say that if we can somehow manage to get those witnesse/s/ subpoenaed and all 40 witnesses do appear, the trial will take in excess of probably a month, I would think.

THE COURT: A month? And you fully expect that this case should be tried in Barrow?

Erwin. Yes, Your Honor. Mr. Ivey would like to have a jury trial in Barrow.

(Transcipt, p. 33)

* * *

THE COURT: * * * Counsel wish to argue the motion -- the discovery motions.

Erwin. The discovery motions, I think there's no problem on, Your Honor.

I would like to clarify one point while we're still here, and that is how Mr. Ivey is going to be able to subpoena the witnesses he needs to prepare his defense without any monies and pay for air fares and witness fees and per diems, which may run two or three days depending on how the Smith trial goes now. I don't know how long I can keep people in Barrow, but I suppose I have to tender them new fees every single day. And there's no way to schedule them. It's just a very difficult problem.

THE COURT: I know if that airline strike continues you won't have any trouble at all keeping them there.

Erwin. If we can get them into Barrow.

THE COURT: If you can get them in there, if they can get in. That's another problem I suppose that....

Erwin. But the Court's present ruling is that Mr. Ivey is not receive any assistance as far as witness fees and per diem and et cetera.

THE COURT: I didn't say that.

Erwin. Okay.

THE COURT: I didn't say that. I said that you were not going to be allowed to withdraw. Now whether or not -- if there are funds available for subpoenas through the -- through the Court, then I would assume that the normal application would be to make a request to the Court for the issuance of subpoenas and that would require you to indicate the necessity of the witnesses. In other words, it's just not going to be a blanket subpoena of a bunch of people, unless it's shown that their testimony would be of assistance in the disposition of the case.

Erwin. I understand. All right. We'll prepare a motion in that regard.

THE COURT: So I think that maybe outside of what Mr. Backstrom's funds indicate there are, the court probably does have funds available for that purpose.

Erwin. Now my only problem then becomes logistics again with trial beginning the 27th, following application, getting subpoenas to the troopers and served all before trial date. And that's gonna be very tight. I can get the motion out when I get back to Anchorage today but....

THE COURT: Well, admittedly it's -- it is cutting it close.

Erwin. Well, I'll get the application....

THE COURT: Problably after we have -- I suspect realistically that you'd be looking at better than 4 weeks, now. You're running -- running right into the 4th of July on that last week of June.

Erwin. Yes, Your Honor. Well, I'll get the application in as soon as I can. If there's a problem then we'll have to work it out, I guess.

THE COURT: All right. Any other matters?

Erwin. Only with regard to payment of attorneys' fees as well.

THE COURT: Well, I would assume that -- I'll probably have to have further discussions with Mr. Backstrom as -- although he's indicated that his fees are -- I'll have to take that matter up at some later time. All right. Is that anything further?

(Transcript, pp. 35-37)

The records from the trial court proceedings are consistent with the above statements by counsel. Attorney Erwin's motion to withdraw as counsel Appendix G) was filed on May 26, 1977, because the trial court ruled that appellant Ivey was eligible for only the public defender and not for appointed counsel at public expense. (Supra at p. 33) The public defender encouraged attorney Erwin to represent Ivey during pre-trial proceedings as the public

defender was unable to represent Ivey for either the proceedings or at the soon-to-be jury trial. (Supra, pp. 34, 35) Accordingly, the trial court denied attorney Erwin's motion to withdraw (Appendix G at p. 2) and allowed the public defender to withdraw (supra, p. 36). The trial court had already determined Ivey's indigency on April 29, 1977 (Appendix L, p. 2), and Ivey's sworn statement submitted to the court at arraignment said that he was financially "unable to retain counsel." (Appendix F, p. 3) The only basis for Ivey's attorney-client relationship when the trial court allowed the public defender to withdraw was the court's order that attorney Erwin shall represent indigent Ivey (supra, p. 36). The trial court made this June 6, 1977, ruling in light of attorney Erwin's statements that Ivey had no funds for attorney fees and witness expenses (supra, pp. 35, 36, 37). The trial court expressly consented to witness fees in ruling that attorney Erwin was to represent indigent Ivey. (Supra, pp. 36, 37) The trial court also provided that attorney Erwin would receive legal fees for services rendered in the case. (Supra, p. 37)

The forced substitution of counsel occurred effective June 13, 1977. The trial court denied payment of attorney's fees to Mr. Erwin on that date (Appendix H). This act forced the matter into interlocutory appeal, whereupon the Alaska Supreme Court allowed a new determination of Ivey's indigency and a new attorney-client relationship based solely on the grounds whether Ivey had in fact retained Erwin as trial counsel. The Alaska Supreme Court also requested an explanation of the trial court's actions in the matter. (Appendix I)

The trial court asked Ivey to file a sworn statement describing the attorney fee arrangement at the time of arraignment. Ivey's August 4, 1977, statement simply reiterated that he was financially unable to retain Erwin after arraignment but that he wanted to be represented by counsel (which--according to Judge Blair--meant only the public defender: supra, p. 33 and Appendix F). See Ivey's affidavit at Appendix J. The trial court replaced Erwin

(Appendix K) and claimed that Erwin was never ordered to represent Ivey (Appendix L, p. 2); but see: supra at p. 36). The court also claimed that the public defender was not allowed to withdraw (Appendix L, p. 2; but see: supra at p. 36). The court justified further that substitution of counsel was permitted were Ivey had no contract fee arrangement with attorney Erwin (Appendix L, pp. 1, 2), though such facts were known at both the arraignment (Appendix F, pp. 2, 3) and the June 6, 1977, hearing (supra, pp. 35, 36, 37)

The trial court was in no position to claim that Ivey requested Erwin's removal, as appellant Ivey protested more than once to the contrary:

> It is my belief that the court has already determined indigency, and that the Ingram v. Justice Court /69 Cal.2d 832, 73 Cal.Rptr. 410, 447 P.2d 650 (1969)/ decision should be reviewed before any new determinations are made. The indecision regarding my attorney-client relationship in this case, I feel, has denied me effective assistance of assigned counsel. /citations omitted/
>
> -- August 4, 1977, affidavit at Appendix J, p. 3

> /Public Defender/ Backstrom. Well, Judge Taylor, the last line that Mr. Ivey's letter - recent letter to me indicated that -- and I think this ought to be put on the record -- he says, "I feel strongly that Mr. Erwin should remain as the court appointed attorney in order to protect my constitutional rights of effective assistance of assigned counsel. And so he's felt -- he still feels that way about the situation, which I tried to articulate to the supreme court as well. I don't know, it's rather disheartening under the circumstances.
>
> -- November 3, 1977, Transcript at p. 79

Essential Jurisdictional Facts

1. Question #1 -- Hard Core Conduct Standard for Public School Curriculum and Instruction (supra, p. ii).

On appeal appellant Ivey raised the issue that fraudulent misrepresentation (false pretences and forgery) was invalid against the First Amendment of the United States Constitution.

That is, school curriculum and instruction mean academic judgment and expression and thus protections against vague and overbroad penal statutes. Ivey referred to established judicial doctrine whereby the courts do not substitute their judgments in place of local school officials' instructional evaluations. (See appellant's Opening Brief at pp. 15-19; Reply Brief at 1-6.)

Appellant Ivey referred to other state regulatory alternatives available under Alaska school law. These alternatives provide more precision of definition of the alleged misconduct, Ivey stated. That is, there are professional license disciplinary proceedings and state-level school approval commission proceedings. Opening Brief at pp. 11, 41, 68, 60.

The Alaska Appeals Court decision cited state case law authorities which addressed United States Supreme Court decisions on the First Amendment (Appendix A at p. 10 n. 6). The Alaska Court reasoned that judicial recognition of curriculum and instruction activities may result in no recognition at all. In this latter case a school official defendant may become liable for the felony sanctions of "hard core conduct." That is, precision is unnecessary where the Alaska Court decides or recognizes which curriculum and instruction activities are acceptable where "fictitious training" is alleged. In short, the Alaska Court views such "hard core conduct" as an exception to First Amendment protections.

Consequently, the Alaska Appeals Court upheld its construction of fraudulent misrepresentation (false pretenses and forgery) in school curriculum and instruction without precision of regulation and strict scrutiny justification. Fraudulent misrepresentation, under this construction, allows the state to apply felony penalties to curriculum and instructional personnel without the necessity of specifying standards or criteria as to precisely which curriculum and instructional activities are criminally proscribed. Having drawn into question the validity

of the said Alaska penal statutes on the ground of their being repugnant to the First Amendment, Ivey received an Alaska Appeals Court decision in favor of the validity of the state statutes. Under Title 28, United States Code, Section 1257(2), this Court may review this Alaska Court decision.

2. Question #2 -- Hard Core Conduct Standard for Public School Curriculum and Instruction Means Racial Discrimination (supra, p. ii). On appeal appellant Ivey raised the issue that "fraudulent misrepresentation" (false pretenses and forgery) was constitutionally defective because the penal regulation enforced racial discrimination in public education. Ivey stated that "fraudulent misrepresentation" was in fact a rigid penal regulation of curriculum and instruction such that non-classroom vocational training was made illegal as applied to the predominantly Eskimo population of the Barrow area. Ivey further wrote on appeal that Eskimo non-participation was the "natural, probable and foreseeable consequence" of enforcing classroom lecture vocational training under felony sanctions. Ivey contended that the single personnel classification of classroom lecturer (professor) virtually eliminated Eskimos for lesser possible supporting roles. Ivey cited Title 42, United States Code, Section 1981, 1983, 2000c, 2000d, 45 C.F.R. 102.6, and the equal protection clause of the Constitution. See Opening Brief at pp. 43-51 and Reply Brief at pp. 14-16.

Ivey also stated that the local municipal scholarship commission, previously a contracting agency for Native-only instruction, became the apparent sole repository and haven for Native training, while the prosecution sought felony indictments and convictions involving Native participation at the University of Alaska at Barrow. Ivey's claims noted that discrepancies in filling out computerized forms and in classroom attendance for the white ("Anttonen") class were excused while similarly situated activities involving Natives at the University

of Alaska became grounds for fraudulent misrepresentation. (Ibid.)

The Alaska Appeals Court noted Ivey's above arguments (Appendix A-23) and agreed that the curriculum and instructional activities enforced by the state violated federal law, specifically Title 45, Code of Federal Regulations, Section 102.6 (The Alaska Court cited the 1975 amendments to the 1970 Federal Regulations, set forth at 35 Federal Register 7334 (May 9, 1970).)

The Appeals Court cited three grounds for justifying Alaska's felony penalties against non-classroom vocational training ("fraudulent misrepresentation") -- "no matter how egregious" the state violation of federal law (Appendix A at p. 24). First, fraudulent misrepresentation (so defined) takes precedence over the equal protection clause of the United States Constitution in curriculum and instructional matters. (Appendix A at pp. 23, 24) Second, Ivey failed to convince the Alaska Court he was a qualified school professional. Third, specific fraudulent intent (i.e., "hard core conduct") overcomes any such federal supremacy problems. (Appendix A at p. 24)

Ivey drew into question the validity of the said Alaska felony statutes on the ground of their being repugnant to controlling federal education and civil rights statutes barring state-enforced racial discrimination. The Alaska Appeals Court ruled in favor of the state penal statutes. Under Title 28, United States Code, Section 1257(2), this Court may review this Alaska Court decision.

3. Question #3 -- Forced Substitution of Assigned Counsel. On appeal appellant Ivey argued that the trial court violated his Sixth Amendment right to effective assistance of counsel in forcing a change in his attorney-client relationship subsequent to the appointment of counsel and determination of indigency under Alaska Statute 18.85.100. Ivey stated that the trial court determined his indigency, i.e., his financial inability to retain private counsel two weeks after the April 15, 1977, indictment.

Ivey's appeal stated that after the trial court made this determination, the court agreed expressly to finance attorney fees for assigned counsel and witness expenses. Just prior to trial, the court refused to honor its financial commitment. (See Opening Brief at pp. 19-32 and Reply Brief at pp. 7-8.) Upon interlocutory appeal, the Alaska Supreme Court ruled that if the trial court found (in a subsequent hearing) that Ivey had not retained the assigned counsel, then the trial court should replace assigned counsel with the public defender. (Ibid.)

The Alaska Appeals Court ruled that the Sixth Amendment right to counsel does not limit the guiding Alaska law (Alaska Statutes 18.85.100) in that the trial court may change or sever the attorney-client relationship sua sponte even after there is an appointment of counsel. That is, the indigent has no right to choose appointed counsel at any time where no fee retainer relationship is present. (Appendix A at pp. 12, 15)

The Alaska Appeals Court has only carried out the ruling made by the Alaska Supreme Court (Appendix I), which construed the guiding statute on assigned counsel (Alaska Statutes 18.85.100) as permitting the trial court sua sponte to sever the attorney-client relationship where it is found that the indigent did not have a fee relationship with appointed counsel. This Alaska Court decision draws in question the Sixth Amendment right to effective assistance of counsel, as the Alaska Supreme Court decision (implemented by the Alaska Appeals Court) is for validity of this particular construction of Alaska Statutes 18.85.100 though repugnant to the Sixth Amendment right to effective assistance of counsel. Under Title 28, United States Code, Section 1257(2), this Court may review the Alaska Court decision.

4. Subsequent Proceedings: Finality and Highest State Court. The Alaska Appeals Court denied Ivey's petition for rehearing on the above-cited issues on August 19, 1981 (Appendix B). On October 23, 1981, Alaska's highest court, the Alaska Supreme Court,

denied Ivey's petition for hearing (Appendix C). The Alaska Appeals Court then entered its mandate (Appendix D).

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

1. Question #1 -- Hard Core Conduct Standard for Public School Curriculum and Instruction (supra, p. ii).

(a) The Alaska Appeals Court's Construction of Fraudulent Misrepresentation (False Pretenses and Forgery). In this case Alaska Statutes 11.20.360 and 11.25.010 rest upon fraudulent misrepresentation, which is the Alaska Court's vehicle for substituting a judicial academic evaluation in place of the local school professional's. The Alaska Court's academic determination consists of two steps: (1) recognition of curriculum and instructional activities, and (2) apportionment of its recognized activities among co-existing educational organizations. The judicial outcome is that one co-existing organization (i.e., a school) may be apportioned out of curriculum and instructional activities, thus making its local school administrator a felony defendant for "fictionious training."

This seemingly "factual" approach avoids defining key terms for such activities (supra at pp. 13, 14). To the unsuspecting this "objective" approach gives the appearance of conforming to case law precedents barring an "opinion" approach to fraudulent misrepresentation. United States v. Pearch, 7 Alaska 246 (1924); Perkins, Criminal Law 2d (1969) at p. 301.

For those school officials who seek notice regarding proscribed curriculum and instructional activities, the Alaska Appeals Court makes undefined the following key penal categories: (a) Which educational organizations might the Alaska Court recognize for the purposes of curriculum and instruction? (b) What activities might the Alaska Court recognize as curriculum and instruction in the Barrow area? (c) What criteria or objective standards does the Alaska Appeals Court offer for one's recog-

nizing an institution and for recognizing acceptable curriculum and instruction for a predominantly educationally disadvantaged population as in the Barrow area (supra, pp. 5, 7, 8, 9, 12, 13, 14)?

(b) Protected Expression: School Curriculum and Instruction.

As regards academic institutions, curriculum and instructional activities are within First Amendment protection at the state level. Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967), citing "/h/ave you ever advised or taught or advocated /the proscribed curriculum or subject matter/" at id., 385 U.S. 601.

As an apparent corollary to protected expression, there is an established body of law barring court suits which substitute judicial academic judgments in place of local school officials' instructional evaluations. Bd. of Curators of University of Mo. v. Horowitz, 435 U.S. 78, 88 (esp. note 4), 92, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978). This doctrine has ample support in state court holdings. Donohue v. Copiague Union Free School District, 47 N.Y.2d 440, 445, 418 N.Y.S.2d 375, 391 N.E.2d 1352 (New York 1979); Peter N. v. San Francisco Unified School District, 60 App.3d 814, 825, 131 Cal.Rptr. 854 (Calif. 1976); Simmons v. Budds, 165 Conn. 507, 338 A.2d 479 (Conn. 1973), cert. den. 416 U.S. 940, 94 S.Ct. 1943, 40 L.Ed.2d 291 (1973).

Where school curriculum and instruction are the target of criminal sanctions, the First Amendment limitations apply. Meyer v. Nebraska, 262 U.S. 390, 403, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); Keyishian, supra, at 385 U.S. 604-606; see also: Healy v. James, 408 U.S. 169, 180, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972), and concurring opinion of J. Rehnquist at 408 U.S. 201; Papish v. Board of Curators of Univ. of Missouri, 410 U.S. 667, 671, 93 S.Ct. 1197, 35 L.Ed.2d 618 (1973), including dissenting opinions at 410 U.S. 672, 673, 676, and 677 ("criminal penalties").

Within precisely defined boundaries, the state may criminally prosecute unprotected expression, such as inchoate crimes (solici-

tation and conspiracy -- United States v. Spock, 416 F.2d 165 (First Cir. 1969)), incitement to imminent lawless action and fighting words (Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969); Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971), and obscenity (McKinney v. Alabama, 424 U.S. 669, 96 S.Ct. 1189, 47 L.Ed.2d 387 (1976)), for example.

To pass constitutional muster under the above tests, the state's criminally proscribed activities must be prohibited under any construction of the penal statute, that is, not even arguably constitutionally protected. Dombrowski v. Pfister, 380 U.S. 479, 491-492, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); Broadrick v. Oklahoma, 413 U.S. 601, 608, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

(c) Other Available Alaska Alternatives Favoring Precision of Regulation. This is not a case where the state government is hard pressed to regulate protected expression in the absence of established administrative alternatives. Like other states, Alaska established precision of regulation in the field of school curriculum and instruction by means of professional licensure (supra at pp. 12-14). Various Alaska Statutes provide a workable system of defining and recognizing acceptable curriculum and instructional activities and providing a graduated series of sanctions. Alaska Statutes 14.20.010, 14.20.020(b), 14.20.370, 14.20.450, 14.20.470, and 14.20.480. Clearly, Alaska has elected to not extend these practical benefits to the largely Eskimo population of the Barrow area. (Supra, pp. 9, 20; Hicklin v. Orbeck, supra, at 437 U.S. 527.

There have been available alternatives for recognizing institutions and recognizing curriculum and instructional activities. The emphasis is on fact finding before even threatening penal sanctions of any kind. That is, Under Alaska Statutes 14.47.030 (as amended by 14.48.130) and Title 4, Alaska Administrative Code, Sections 45.010 and 48.010, an administrative fact finding procedure determines the precise conduct which the state seeks to proscribe. Thus "prior restraint" issues are properly addressed. If the

accused violates the subsequent cease and desist order, then he or she is subject to misdemeanor liability. The state also has available its statewide review committee for arbitration of disputes where co-existing schools make competing claims for the same curriculum and instructional activities. Civil, not criminal, remedies apply, based upon professional fact finding procedures. See Alaska Statutes 14.40.909(b) and 14.40.919.

The Alaska Appeals Court simply omits any mention of how its construction of "fraudulent misrepresentation" addresses the need to bypass the above-described alternatives, that is, professional licensure, cease and desist orders, and state-level arbitration. Appendix A at pp. 9-11.

(d) Strict Scrutiny Justification. The Alaska Appeals Court has no basis for claiming that no curriculum and instructional activities occurred under Ivey's auspices as a University of Alaska vocational training director. Prosecution witnesses rebut any such claim. (Supra at pp. 21, 22, 23; but see Appendix A at p. 10.) Hence, there can be no Alaska Appeals Court claim that Ivey's curriculum and instructional activities would be prohibited under any construction of "fraudulent misrepresentation." Because the Alaska Court's key term is so vague, the prosecution had been able to constantly shift ground in his definitions of the proscribed curriculum and instructional activities (supra at pp. 29, 30, 31, 32). The Alaska Court's use of the term "hard core conduct" appears to be only a vehicle for avoiding the First Amendment requirements for precision of regulation and strict scrutiny justification -- requirements the Alaska Court could not hope to fulfill. In applying its term "hard core conduct," the Alaska Court must engage in its own academic judgments (recognizing or not recognizing what it considers "acceptable curriculum and instruction") and apportioning such educational activities among the schools or organizations the Court chooses to recognize. Such criteria are incapable of objective measurement. Keyishian, supra, at 385 U.S. 604.

2. Question #2 -- Hard Core Conduct Standard for Public School Curriculum and Instruction Means Racial Discrimination. (supra, p. ii).

(a) Alaska Appellate Court Construction. The Alaska Statutes 11.20.360 and 11.25.010 depend upon fraudulent misrepresentation in this case, that is, the Alaska Court's construction permitting the Court to make its own academic judgment in place of the local school professional's. The Court's undefined criteria for recognizing both schools and curriculum and instruction activities permit the state to implement racially segregated or dual schools -- University of Alaska versus the municipal scholarship commission's contract operations. This is accomplished by apportioning, i.e., recognizing curriculum and instructional activities according to race; that is the practical effect of the penal regulation of "fraudulent misrepresentation."

The prosecution elected to focus its criminal charges on only those curriculum and instructional activities involving Native participation at the previous all-white University of Alaska extension center (supra, pp. 6-9). Only those curriculum and instructional activities which are known to result in Native non-participation are the prosecution's target, and similarly situated recordkeeping (curriculum and instruction) involving whites-only are beyond criticism. Supra, pp. 20, 25, 28, 29, 30, 31, 32.

Established rules permitting local school officials to make academic judgments were ignored in favor of rigid standardized or computerized forms permitting only classroom lectures for the mostly Eskimo Barrow population. Supra at pp. 16, 17, 21, 28, 29. Racial liaison personnel substituted for guidelines as to what the state criminal prosecution might recognize in the way of vocational curriculum and instructional activities. Supra, pp. 18, 19.

Rather than reject such a construction, the Alaska Appeals Court affirmed the state's penal recognition of curriculum along racial lines. The Alaska Appeals Court indicated that Barrow Eskimo curriculum and instructional activities belonged to the Natives' municipal scholarship commission (bearing the Natives' name: "Inupiat University"), thus raising the scholarship commission to the level of an institution or school accredited to do business. See Appendix A at pp. 2, 9-11.

Specifically, the newly recognized Native institution, according to the Alaska Court, was matched with Natives and non-classroom training. (See Appendix A at pp. 2, 3.) The University of Alaska extension had a different format: "Local public facilities such as high school classrooms were to be used for instruction." (Appendix A at p. 3) Non-duplication takes upon a racial character. That is, in the above light, racially dual schools and non-duplication are synonymous. "The extension center was not intended to duplicate the services offered by IU [municipal scholarship commission]." Appendix A at p. 2.

The Alaska Appeals Court does not deny that such practices violate federal law (Appendix A at p. 24). However, the Alaska Court reasoned that Alaska criminal law overrides any considerations posed by federal law affecting the schools ("no matter how egregious"). The Alaska Court reinforces by undefined references to the penal statutes without addressing the key issue of "fraudulent misrepresentation," or "fake curriculum and instructional activities." Appendix A at p. 24.

(b) Federal Bar Against State Regulations Requiring Racial Discrimination in Public Education. Federal law on this subject has been of a landmark nature. The lay person may believe that Brown v. Board of Education (347 U.S. 483,

1954) is the keynote decision proscribing racially discriminatory public education, or that Loving v. Virginia (388 U.S. 1, 11, 87 S.Ct. 1817, 18 L.Ed.2d 1010; 1967) is the benchmark for prohibition of state enforced racial discrimination through criminal prosecution. To the contrary, from the earliest times in public school history, the federal authorities have seen fit to criminally prosecute local school officials for engaging in racially discriminatory practices. United States v. Buntin, 10 F. 730 (Sixth Cir. 1882).

Contemporary jurists look to the following federal statutes for assuring racial equality civil rights compliance in public education: Title 42, United States Code, Sections 1981, 1983, 2000c, 2000d, 2000e-2(a)(2), and 2000e-3(a). As to the Barrow-based apprenticeship and training guidelines and operations, Title 29, Code of Federal Regulations Part 30 prohibits racially discriminatory practices (see Appendix M and p. i).

Segregative intent applies to those state actions having "the natural, probable and foreseeable consequence of creating and maintaining segregation." United States v. School District of Omaha, 521 F.2d 530, 537, reh. den., cert. den. 96 S.Ct. 361. The schooling factors of personnel, facilities, curriculum and financing are determinative of the presumption of segregative intent, which, when the presumption arises, shifts the burden of "clear and convincing" rebuttal to the state. Id., at 521 F.2d 537; Keyes v. School District No. 1, 413 U.S. 189, 210, 93 S.Ct. 2686, 37 L.Ed.2d 548 (1973).

Those who argue that public school desegregation is inapplicable to the adult level are making invalid, artificial distinction . Lucy v. Adams, N.D. Alabama 1955, 134 F.Supp. 235, 239, affirmed, 350 U.S. 1, 76 S.Ct. 33, 100 L.Ed. 3 (1955).

(c) Suspect Classification Rule. The Alaska Appeals Court simply ignores the rule that state regulation, civil or criminal, which utilizes a suspect classification (race),

requires strict scrutiny justification. The Alaska Court foresees the racial implications of arbitrary penal enforcement of curriculum and instruction (which excludes the Barrow Eskimos), but submits that such federal law is subordinate to Alaska's felony statutes regulating school activities--solely because the Alaska regulations are criminal in nature. Appendix A at p. 24.

The rationale of the Alaska Appeals Court includes no authority from guiding decisions of the United States Supreme Court, as the cases are to the contrary. The Alaska Court fails to show how penal enforcement of racially dual schools serves any rational or substantial state objective.

3. Question #3 -- Forced Substitution of Assigned Counsel (supra, p. ii).

(a) Alaska Supreme Court Construction. Alaska Statutes 18.85.100 recognize that an indigent criminal defendant must be offered assigned counsel at critical stages. The Alaska Supreme Court construes this requirement to allow the trial court to change the attorney-client relationship where it may be shown that the indigent had no fee arrangements with the appointed counsel. (Appendix I) Thus, the trial court may schedule a trial, and appointed counsel may be assigned (supra, pp. 35-37). The trial court is permitted, if not encouraged, to rend that established attorney-client relationship without a request from anyone. (Appendix H) The defendant's contrary protests are irrelevant. The Alaska Appeals Court upholds such a ruling. (Supra at p. 39; Appendix A at pp. 11-15).

(b) The Sixth Amendment Right to Effective Assistance of Counsel. Cuyler v. Sullivan, 446 U.S. 335, 344-345 & n. 9, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) held that there is no reason to distinguish between retained and appointed counsel

when determining whether a defendant receives adequate representation. This Court has also held that a defendant in state court must be offered assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). A recent federal appeals court decision summarizes the body of law on this specific point, that is, that the state courts may not arbitrarily sever the attorney-client relationship affecting a criminal defendant. Slappy v. Morris, 649 F.2d 718 (Ninth Cir. 1981).

(c) Alaska Supreme Court Decision -- Departure from the Sixth Amendment Standard. Alaska Statutes 18.80.100, as construed by the Alaska Supreme Court and implemented by the Alaska Appeals Court, allows the state to rend the indigent defendant's relationship with appointed counsel--at will. Because the indigent defendant is, by definition, financially unable to retain private counsel, that defendant's attorney-client relationship continues according to the unbridled discretion of the trial court. In contrast, only the defendant who can afford some kind of fee relationship with assigned counsel is assured of a stable attorney-client relationship going into trial. The Alaska Court's ruling is contrary to Cuyler v. Sullivan, 446 U.S. 335, 344-345, supra.

CONCLUSION

The questions presented by this appeal are substantial and require plenary consideration by the Court for their resolution.

DATED at San Diego, California this 21st day of January, 1982.

Respectfully submitted,

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Appendix

THE COURT OF APPEALS OF THE STATE OF ALASKA

RICHARD C. IVEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

File No. 4126

MEMORANDUM OPINION

AND JUDGMENT*

[No. 25, June 30, 1981]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: Richard C. Ivey, Pro Se, San Diego, California. Patrick J. Gullufsen, District Attorney, Daniel W. Hickey, Chief Prosecutor, and Avrum M. Gross, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Singleton, Judge, and Rowland, Superior Court Judge. [Coats, Judge, not participating.]

On April 20, 1978, a jury in Barrow, Alaska, found Richard Ivey guilty of 11 counts of obtaining money by false pretenses[1] and 15 counts of forgery.[2] Ivey appeals, raising numerous claims of error.

FACTUAL BACKGROUND

Ivey's charges arose from a complex and extended series of activities occurring during the academic year 1975-76 when Ivey served as director

1. Former AS 11.20.360.

2. Former AS 11.25.010.

*Entered pursuant to Appellate Rule 214 and Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3).

APPENDIX A

of the University of Alaska's Barrow Extension Center (hereinafter extension center). At that time, Barrow was provided with two college level institutions: Inupiat University of the Arctic (hereinafter IU) and the extension center. IU was incorporated during the summer of 1975 by the North Slope Borough and was governed by the Inupiat Council, which served, in effect, as a board of directors. IU's primary source of funding came from tuition grants provided to the school, on behalf of enrolling students, by the North Slope Borough, which had established a tuition grant committee for the purpose of reviewing and approving tuition grant applications. IU was established to provide adult residents of the North Slope area with the opportunity to obtain education through a flexible curriculum encompassing traditional classroom study, on-the-job training, work-study, individual tutoring and independent study. The first president of IU was Bill Vaudrin, who served from the time of the school's incorporation in the summer of 1975 until early January 1976. James Milne, who had served as Vaudrin's vice president, took over the presidency in January.

The extension center, by contrast, was a state-funded post-secondary educational program; it operated under the control of the University of Alaska's Department of Rural Educational Affairs (hereinafter REA), that was first established in the spring of 1975. REA's responsibility was to provide for the post-secondary educational needs of rural Alaska. The extension center itself came into existence in August 1975, when Richard Ivey was hired as its first director. In that capacity, Ivey was to establish courses, hire instructors, and otherwise organize and supervise a post-secondary educational program focusing on occupational training. The extension center was not intended to duplicate the services offered by IU. As matters turned out, however, the operations of the

extension center and IU became inextricably intertwined during the school year 1975-76, a development in which Ivey played a crucial role.

Ivey had come to Barrow in the late spring of 1975, having been hired by Vaudrin and Milne to work for IU as its principal financial officer. In this capacity he was depended on by the Inupiat Council to keep appropriate records and to inform the council as to the status of IU's affairs.

Ivey failed to reveal his employment with IU to the University of Alaska when he was hired to fill the position as director of the extension center. The extension center was not provided with a campus, office buildings or clerical staff. Local public facilities such as high school classrooms were to be used for instruction. IU also had no classroom facilities or campus, but it did occupy a building in Barrow with office space for Vaudrin, Milne, Ivey and other clerical staff. Thus, when Ivey was hired as extension center director, he simply redesignated his office at IU as extension center headquarters. Ivey did not resign his position with IU, but continued on, serving simultaneously as IU's financial manager and as the extension center's director.

During the first semester of 1975-76, IU had a clerical staff which included, at one time or another, at least six people, all of whom worked under the supervision of Ivey and were paid by IU. Additionally, IU hired, commencing September 1975, five representatives from villages in the North Slope Borough to serve as "village coordinators" for the university. Their role was an organizational and administrative one. The coordinators were to encourage people in their villages to teach courses such as native handicrafts, Inupiat history, Eskimo dancing, or the Inupiat language. They were, further, to encourage and conduct enrollment and to communicate with IU in Barrow to assure that students obtained tuition grants and received

credit for course work. These IU employees--both the clerical staff in Barrow and the village coordinators--were to become, quite unwittingly, the entire faculty of the extension center, a transition which was made possible by the dual positions which Ivey occupied.

According to evidence produced at trial, in early December, 1975, a letter was written to Ivey by the University of Alaska's Admissions and Records Office. Ivey was informed of the need to submit fall semester registration records, grade reports, course summaries, and schedules. Up to that time Ivey had submitted no information at all to the University of Alaska concerning the extension center. About a week after the letter was sent, Ivey called the office of admissions, acknowledged receipt of their letter, and specifically asked if his faculty would be paid upon submission of appropriate paperwork. He was told that payment would be made.

Ivey then formulated a fall semester course schedule and assigned "instructors" to the various courses that he had written up, using the names of IU's clerical staff as his faculty. Ivey enrolled students in these courses by taking names from lists of individuals who had received tuition grants from IU. On February 4, 1976, Ivey formally submitted to the registrar's office of the University of Alaska paperwork, including "End of Semester Grade Reports", that listed six members of IU's clerical staff as extension center instructors, represented that they had taught a variety of courses ranging from "Orientation to Shop Work" to "Comprehensive Business English", and further allocated credit on a pass/fail basis to various "students" enrolled in each of the courses. A separate grade report was submitted for each course supposedly taught, and the signature of the instructor teaching the course was required on the face of the grade report. Ivey submitted a total of 15 End of Semester Grade Reports, thus representing

to the University of Alaska that six instructors had taught a total of 15 courses for the extension center. On all 15 grade reports, Ivey forged the names of the listed instructors. In reliance on these reports, the University of Alaska issued payroll checks, one per instructor, with compensation at the rate of $400 per credit hour taught. A total of $14,502.28 in payroll checks was issued by the University of Alaska to the extension center instructors for first semester courses. The checks, however, never reached the instructors; all checks were intercepted by Ivey.

The same pattern of misrepresentation was repeated by Ivey at the conclusion of the spring semester, 1976, except that Ivey's "faculty" was comprised of IU's five village coordinators. As a source for student enrollment on the spring semester grade reports, Ivey used a list of students who travelled to Barrow from various North Slope villages in June of 1976 under a federal CETA grant for vocational training as heavy equipment operators. Again, Ivey signed the names of the "instructors" to their grade reports; upon this occasion he placed his own initials adjacent to the signatures.[3] Upon submission of the spring semester grade reports, the University of Alaska issued five payroll checks, one per instructor; again, Ivey intercepted the checks. The total amount paid by the University of Alaska to extension center instructors for spring semester courses was $12,402.55.

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3. Apparently Ivey placed his initials alongside the signatures of the purported instructors, realizing that his act of signing for them would be acceptable to the University of Alaska in light of the fact that the five instructors were located in remote villages and could not be expected to travel to Barrow to fill in and sign their reports in final form. Ivey's 15 charges of forgery stemmed from the 15 forged instructors' signatures contained in the first semester grade reports. Six counts of obtaining money by false pretenses related to the six payroll checks issued to the fall semester instructors. Since the instructors' names accompanying the second semester grade reports were initialed by Ivey, prosecution for forgery as to these reports was foreclosed. Thus, as to the second semester extension center courses, only five charges of obtaining money by false pretenses were brought against Ivey.

Evidence tracing the funds received by Ivey was also produced at trial. $10,000 of the funds from the fall semester payroll checks were used by Ivey and Milne to purchase a house in Barrow, the transaction being consummated in their own names. Additional sums were used by Milne to make a personal loan to an influential member of the Barrow community, and the balance was deposited in one of several "student body corporation" bank accounts. A number of checking accounts had been opened by Ivey and Milne in the names of various IU student body organizations. These organizations existed on paper only, and Ivey was the sole authorized signatory on the various student body accounts.

The spring semester payroll checks paid by the University of Alaska to extension center instructors were deposited by Ivey in special accounts established for each of IU's village programs.[4]

The fictitious nature of the extension center courses was established by the prosecution in its case-in-chief through the testimony of the individuals listed as instructors, all of whom denied having taught courses for the extension center and, more particularly, denied having any knowledge of the courses or subject matter listed in the grade reports as having been taught by them. Further, all denied signing the grade reports, authorizing

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4. The second semester payroll checks were received by Ivey in late June or early July 1976. Shortly thereafter, a full scale investigation of Ivey and Milne's dealings was initiated, and Ivey was terminated from his positions with IU and the extension center. Accordingly, there was no evidence presented by the state as to what Ivey planned to do with these funds. It is clear, however, that the various instructors to whom payroll checks were issued did not receive the checks, nor were they aware that the checks had been applied for and issued.

Ivey to sign them, or even knowing of their existence until after the investigation of Ivey's affairs had commenced.[5]

In defense at trial, Ivey contended that the extension center courses that he listed on grade reports submitted to the University of Alaska were not fictitious. He said that the courses were, instead, innovative educational modes which he had been forced to adopt due to the lack of facilities and staff at the extension center, the University of Alaska's failure to adopt clear guidelines for non-traditional occupational education, and the impossibility of using traditional classroom education in the unique cultural setting of Barrow.

Specifically, Ivey explained that he entered into an agreement on behalf of the extension center with IU to form a consortium and to pool resources. IU was to provide instructors and facilities for extension center courses; IU would also advance salaries to extension center instructors, which would be reimbursed by the extension center when payment was received from the University of Alaska. According to Ivey's description of the consortium agreement, the extension center was to focus on occupational training, while IU would offer courses in college level academic subjects. Ivey denied that his fall semester extension center instructors were clerical employees of IU. He maintained that these individuals had been hired by him as instructors for the extension center, but that, due to their lack of experience and the difficulty of classroom teaching in Barrow, the instructors could not adequately function in traditional teaching roles. Thus,

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5. There was an indication that one of the fall semester instructors had in fact started to teach a course for IU, not for the extension center, but the course was terminated after several weeks when attendance fell off.

Ivey explained, shortly after the beginning of the fall semester the classroom mode of instruction was scrapped and extension center courses were converted to an "experience-based" educational process. Under this system, the instructors became "helpers" available to assist with counselling and advising students who happened to drop by, and also available to distribute books and otherwise lend assistance as needed. Students in the "experience-based" process purportedly were given books and received credits on the basis of their ability to meet minimum standards of performance in applying relevant skills to their normal jobs. Ivey stated that he personally did much counselling and, as director of the program, took sole responsibility for determining who should receive credit. This was necessary, according to Ivey, because of the inexperience of his instructors with this innovative form of education and because of the need to maintain uniformity in evaluation.

Ivey further maintained that his signing of instructors' names to grade reports was both authorized and necessary as part of his function as extension center director. He rationalized his failure to pass University of Alaska payroll checks on to individual instructors by reliance on his claim that the instructors had already been advanced salaries by IU, and that he simply used the funds, in his capacity as financial manager of IU, to reimburse that school. Finally, Ivey stated that he believed that the inability of his instructors to understand that they had in fact taught courses could be ascribed to the fact that they were insufficiently trained in theories of occupational education to appreciate the system of "experience-based" education which he had implemented.

In rebutting Ivey's defense, the basic thrust of the prosecution was twofold: First, it called as rebuttal witnesses a group of individuals

listed as students on the grade reports prepared by Ivey. These individuals consistently testified that they had never enrolled in extension center classes, had never received any instruction, and were unaware of any activity on their part, on the part of Ivey, or on the part of Ivey's purported faculty which could have justified issuance of college credits. The second basic prong of the prosecution's rebuttal consisted of proof that all of the individuals listed by Ivey as extension center instructors had in fact been employed by IU as trainees under a federal CETA grant. Thus, IU was already fully reimbursed by the federal government under the CETA program for all salaries paid to the individuals listed by Ivey as extension center instructors--both the fall semester clerical staff from Barrow and the spring semester village coordinators.

The foregoing statement, though of necessity a sketchy and incomplete summary of the evidence produced in the course of Ivey's month-long trial, will suffice for the purpose of considering a number of claims raised on appeal. Several of Ivey's claims, however, relate to pre- or post-trial issues. For the sake of simplicity, we shall discuss the issues on appeal in the order in which they have been presented in Ivey's brief.

I. UNCONSTITUTIONAL VAGUENESS

In his first issue on appeal, Ivey argues that his indictment was unconstitutionally vague in that its assertion of "fraudulent misrepresentation" on his part depended upon after-the-fact opinions by the prosecution as to what constituted an acceptable method of education. We construe Ivey's argument to be a claim that the criminal statutes with which he was charged were unconstitutionally vague as applied to his situation.

Ivey contends that, in light of the nebulous or nonexistent guidelines defining proper modes of occupational training and in light of the highly subjective standards by which the legitimacy of innovative educational programs is assessed, he was not given fair notice at the time he served as extension center director that the educational efforts which he undertook in good faith could later be deemed improper. Thus he contends that he was subjected to conviction for good-faith conduct which was judged to be unsatisfactory only after its completion and by application of subjective and arbitrary standards.

We find this argument unpersuasive for two reasons. First, even assuming that the definition of what constitutes legitimate education may be, in some instances, sufficiently undefined to result in a lack of fair notice to an individual charged with failure to provide adequate or legitimate instruction, it is manifest that Ivey's case does not fall in the category. The state's contention was that Ivey's extension center courses were entirely fictitious, and that no instruction whatsoever had been given. It is not the adequacy of Ivey's educational efforts which was put into question, but rather whether any educational efforts whatsoever were made. Ivey's conduct thus falls within the "hard core" of prohibited activity as to which there can be no reasonable dispute as to adequacy of due process notice:

> It is sufficient to note that "even if the outermost boundaries of [the challenged statute] may be imprecise, any such uncertainty has little relevance here, where appellants' conduct falls squarely within the 'hard core' of the statute's prescriptions . . . ."[6]

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6. Summers v. Anchorage, 589 P.2d 863, 868 (Alaska 1979) (footnote omitted). See also Holton v. State, 602 P.2d 1228, 1236-37 (Alaska 1979); Levshakoff v. State, 565 P.2d 504, 507 (Alaska 1977); Stock v. State, 526 P.2d 3, 9-10 (Alaska 1974).

Second, the possibility of Ivey's having been convicted of forgery and false pretenses by after-the-fact application of arbitrary criteria to good faith conduct on his part is virtually nullified by the specific intent element of both statutes, which required intent to defraud to be established beyond a reasonable doubt before Ivey could be convicted. The instructions in this case disclose that the jury was appropriately told that it could not convict Ivey absent a conclusion that his conduct was motivated by the specific intent to defraud. Accordingly, the jury's verdicts of conviction are an unequivocal finding, as a factual matter, that Ivey was not the victim of confusion or misunderstanding as to what might constitute a legitimate educational program.

II. SUBSTITUTION OF COUNSEL

Ivey argues that a trial court order substituting the Public Defender Agency for his originally retained counsel amounted to error depriving him of his rights to effective assistance of counsel and speedy trial. An understanding of relevant pretrial events is critical to disposition of this issue, which involves a number of separate questions.

During the lengthy preindictment investigation in this case, Ivey was represented by a retained attorney, Mr. Lawrence Erwin. After indictment, Erwin appeared with Ivey at arraignment on April 15, 1977, entering a special appearance. Ivey told the court that he was indigent and requested that Mr. Erwin be appointed to represent him at state expense in light of his familiarity with the case. Judge Blair, who handled the arraignment, directed Ivey to submit himself to a routine interview with the office of pretrial services to determine his financial status. Judge Blair indicated

that "if he's [Ivey] eligible for appointed counsel, a Public Defender will be appointed." At the arraignment, the case was assigned to Judge Taylor and an omnibus hearing was scheduled for June 6.

On April 29, Judge Taylor, having received a report showing Ivey to be indigent, entered an order appointing the Public Defender Agency to the case. With the deadline for filing of omnibus motions quickly approaching, Mr. Erwin, who was unaware of Judge Taylor's order appointing the Public Defender Agency to the case, acted to protect Ivey's rights by filing, on May 4, a number of pretrial motions, accompanied by a general entry of appearance. Neither Judge Taylor nor Mr. David Backstrom, the Public Defender Agency attorney assigned to Ivey's case, was informed as to Mr. Erwin's original limited entry of appearance; when Erwin filed his omnibus motions and general entry of appearance, both Judge Taylor and Mr. Backstrom assumed that Ivey had retained counsel for trial. Mr. Backstrom quickly filed a motion to withdraw. At about the same time, Mr. Erwin, learning of the Public Defender Agency's appointment, also sought to withdraw as counsel.

The opposing motions to withdraw were considered by Judge Taylor at the omnibus hearing of June 6. Based on Mr. Erwin's general entry of appearance, Judge Taylor denied his motion to withdraw, ruling that Erwin would be required to act as Ivey's retained attorney; Mr. Backstrom was then allowed to withdraw as counsel on behalf of the Public Defender Agency.

Thereafter, Mr. Erwin fully argued all of the omnibus motions which he had filed; Judge Taylor decided all motions adversely to Ivey. Mr. Erwin then petitioned the Alaska Supreme Court for review. The petition argued both the denial of Erwin's motion to withdraw and the disposition of his omnibus motions. On June 15, 1977, the supreme court granted a stay

pending decision of the petition for review. Review was granted on August 1 as to the sole issue of failure to grant Mr. Erwin's motion to withdraw as counsel. As to that issue, the supreme court, retaining jurisdiction, remanded the case to Judge Taylor with directions to hold a hearing to determine Ivey's financial status and whether he had contracted for Mr. Erwin to represent him throughout trial. In the event that Ivey was found indigent and that no contract was found to exist, the Public Defender Agency was to be appointed. Judge Taylor was required to report to the supreme court the results of his hearing and any actions which he took based on the hearing.

A hearing was duly held on August 3, 1977. Mr. Erwin appeared in Ivey's absence, representing to the court that Ivey was indigent and that no contractual arrangement existed between them as to trial. Because the state objected to proceeding on the basis of Mr. Erwin's statements in Ivey's absence, Judge Taylor ordered Erwin to submit an affidavit executed by Ivey, in Ivey's own words, verifying this information. Thereafter, Erwin filed an affidavit in which Ivey established his indigency and specifically acknowledged that his agreement retaining Mr. Erwin as counsel had covered only the period up to the time of his indictment. Ivey expressly represented in his affidavit that he no longer desired Erwin's representation and would prefer appointment of the Public Defender Agency to represent him.

After receiving Ivey's affidavit, Judge Taylor entered an order appointing the Public Defender Agency to the case and permitting Mr. Erwin to withdraw. Pursuant to the supreme court's order of August 1, Judge Taylor reported his action in early September; on September 23, 1977, the supreme court issued an order vacating the stay of proceedings and terminating the petition for review.

The state promptly moved to set a date for trial. At a hearing on this motion on November 3, 1977, Mr. Backstrom appeared without Ivey, stating that Ivey could not afford to come to Alaska from his home in Hawaii, but that Ivey insisted that the 120-day speedy trial rule (Alaska R. Crim. P. 45) would run out on November 16. Ivey wanted Mr. Backstrom to move for dismissal if the case was not set for trial before that date. Mr. Backstrom represented to the court at the trial setting hearing that he disagreed with his client's interpretation of the speedy trial rule and calculated expiration of 120 days in early January 1978. Mr. Backstrom also indicated that he could not be prepared for trial even by January and would need a substantially longer period. At this point, the trial setting hearing was postponed for one week with the understanding that Mr. Backstrom would, in the interim, personally contact Ivey and either secure his presence or reach a specific understanding.

When the trial setting hearing resumed, Mr. Backstrom informed the court that he had reached an agreement with Mr. Ivey about the timing of the case. Ivey executed a waiver of appearance and consent to be represented by Mr. Backstrom which was filed with the court. Mr. Backstrom also filed a speedy trial waiver signed by Ivey agreeing to postponement of trial to the end of March 1978. In reliance on Ivey's waiver, the trial was scheduled for late March 1978. On November 26, 1977, a supplemental speedy trial waiver executed by Ivey was filed, extending his earlier waiver by an additional 60 days in order to cover any unforeseeable circumstances which might delay the trial.

Ivey's trial was commenced in Barrow on March 28, 1978.

A. Did Judge Taylor Improperly Substitute the Public Defender Agency For Ivey's Retained Counsel?

Ivey had no right to appointed counsel of his own choice. McKinnon v. State, 526 P.2d 18 (Alaska 1974). It was Mr. Erwin himself, presumably on Ivey's behalf, who petitioned the Alaska Supreme Court to be relieved as Ivey's attorney; the supreme court granted his petition and gave specific directions to the trial court as to the manner in which this issue was to be resolved. Judge Taylor complied with the supreme court's order, and, relying on specific representations personally made under oath by Ivey, he appointed the Public Defender Agency and permitted Mr. Erwin to withdraw. Ivey acknowleged in his affidavit that he had no contractual arrangements to retain Mr. Erwin after indictment. More crucially, Ivey affirmatively stated in his affidavit that he desired to have the Public Defender Agency substituted for Mr. Erwin. Given these representations, we believe it singularly inappropriate for Ivey to complain now of the Public Defender Agency's appointment.

B. Was Ivey Denied His Right To Speedy Trial?

Reference to the procedural background of this case as set forth above compels rejection of Ivey's claim. Reviewing the period of time between indictment and trial in light of the provisions of Alaska R. Crim. P. 45(d) for excluded periods, it is evident that all of the time from May 4 through September 23, 1977, is excluded time by virtue of Ivey's submission of omnibus motions and his subsequent petition for review. From November 10, 1977, through the time of trial, Ivey expressly waived his right to speedy trial. In short, virtually all pretrial delay in this case was either caused or approved by Ivey.

C. Did Ivey Receive Ineffective Assistance Of Counsel Due To The Public Defender Agency's "Withdrawal Of Key Defenses"?

Ivey claims that Mr. Backstrom, after being appointed to his case, "withdrew key defense issues" which Mr. Erwin had been prepared to raise. This, according to Ivey, deprived him of effective assistance of counsel. However, the record is devoid of any indication that Mr. Backstrom withdrew any issues Mr. Erwin had planned to pursue. Mr. Backstrom was not appointed until after an omnibus hearing had been held, after which all of the motions filed by Mr. Erwin had been considered by the trial court and denied. After being appointed, Mr. Backstrom effectively raised additional pretrial motions, following up on their denial by a petition for review. Nothing in the record shows that Mr. Erwin contemplated any motions other than those which he filed. Nor did Ivey, at any time prior to trial, claim that Mr. Backstrom was refusing to raise issues which Ivey believed to be important. Furthermore, having considered the issues which Ivey contends were withdrawn, and having independently reviewed the record, we are convinced that there is no reasonable possibility that the outcome of this case would have been affected had these various matters been asserted.[7]

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7. Defenses claimed to have been withdrawn are designated by Ivey as follows: "contract breach, police custody of records, race segregation, conflicts of interest, first state adjudication, and state misconduct." The discussion in Ivey's brief is so vague and unfocused as to all of these defenses that our discussion of them involves considerable speculation as to their meaning and scope. None of the defenses were properly raised below. The obscurity with which they are described and the failure to establish any prejudice suffered as a result of failure to raise them would normally lead us to conclude that they are improperly raised on appeal. However, we choose to consider these claims in view of Ivey's pro se status.

The "contract breach" defense, if raised, would have been totally irrelevant to the issue of Ivey's guilt: even assuming the University of

D. Was Ivey's Court-Appointed Counsel Otherwise Ineffective?

Ivey further argues that Mr. Backstrom was ineffective and inadequately aggressive on the whole, thus falling below the minimal level of competency required by the Sixth Amendment's guarantee of effective assistance of counsel. Ivey cites numerous examples where he claims Mr. Backstrom

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(footnote 7 continued)

Alaska had breached a contract with Ivey, IU, or others, such a breach could under no circumstances justify the crimes of obtaining money by false pretenses or forgery. This same point applies to the "race segregation" issue.

The "police custody of documents" issue is a red herring. Ivey had full access to documents in police custody well in advance of trial; other documents which had been seized by police early on and returned to their owners were properly available to Ivey through subpoena, not through the state. See, e.g., State v. Smith, 599 P.2d 187, 195 (Ariz. 1979); State v. Clark, 568 P.2d 406, 408 (Alaska 1977). Ivey was intimately acquainted with the records of IU and the extension center, yet prior to trial he did not claim any specific items to be missing, nor did he make any requests for particular documents which he considered vital but which appeared to be missing. No specification is made by Ivey on appeal as to what items are missing from the records produced at trial, nor is there any showing that any documents which might be missing would presumably have benefited Ivey's case. A broad request for preservation of massive amounts of documents or for production of unspecified "exculpatory" materials cannot be deemed reasonable and is, in effect, the equivalent of no request at all. United States v. Agurs, 427 U.S. 97, 106-07, 49 L.Ed.2d 342, 351 (1979); United States v. Haldeman, 559 F.2d 31, 73-77 (D.C. Cir. 1976).

As to the "conflict of interest issue," in which Ivey vaguely asserts the possibility of a conflict of interest between his local supervisor and his Fairbanks supervisor, we find the claim so attenuated in terms of relevance as to be wholly frivolous. The "first state adjudication" claim, which apparently involves an argument that a prior civil settlement between Ivey and the state with respect to his termination as a state employee precludes subsequent criminal prosecution, is similarly meritless on its face. Finally, we note that both the "state misconduct" claim and the "race segregation" defense are utterly unsupported by reliable evidence or offer of proof in the record.

Accordingly, even if it were clearly established in the record that Ivey's initial attorney planned to raise these defenses and that they were abandoned by his second attorney, we would conclude that such an abandonment would have been warranted and that there is no reasonable possibility that abandonment of these issues could ultimately have affected the outcome of Ivey's case.

APPENDIX A

could have preserved error by objecting, acted more assertively, or presented additional arguments. Examination of Ivey's citations reveals that, in many instances, objections would plainly have been improper; in other cases, the points alluded to by Ivey involve such trivial and inconsequential matters that, though objection might technically have been proper, it was in all likelihood strategically advantageous for Ivey's counsel not to object. We have carefully reviewed the totality of Mr. Backstrom's handling of this lengthy and difficult case, both with respect to pretrial representation and conduct in the course of the trial itself. We conclude that Mr. Backstrom's conduct was well within the ambit of effective representation as defined by the supreme court in Risher v. State, 523 P.2d 421, 424 (Alaska 1974), and Morgan v. State, 582 P.2d 1017, 1022 (Alaska 1978).

III. SUPPRESSION OF EVIDENCE FROM THE GRAND JURY

Ivey alleges that the prosecution suppressed favorable defense evidence from consideration by the grand jury. This issue was raised by Ivey below in the form of a motion to dismiss, which the trial court denied. In support of his motion to dismiss below, Ivey presented a number of witnesses and advanced a two-pronged argument. First, Ivey tried to establish, through the testimony of a number of University of Alaska officials, that the concept of "experience-based" education was not an unreasonable one to adopt for the Barrow area, and that no guidelines or policies existed specifically precluding him, as extension center director, from implementing a program of "experience-based" training. Ivey argued below and he argues on appeal that since these witnesses support the legitimacy of his theory of of "experience-based" education, they should have been called to testify before the grand jury.

The second prong of Ivey's argument regarding prosecutorial misconduct focuses on federal regulations governing vocational education for persons of limited English-speaking ability. Ivey established, at the trial level, that these regulations, contained in 45 CFR 102.6, required the University of Alaska, through REA, to adopt a comprehensive plan of vocational education for use in programs such as the extension center. Through his witnesses, Ivey showed that no such plan existed. He thus argued below and argues now that his actions as extension center director, though perhaps not in conformity with university policy, were necessary to assure compliance with these regulations and with federal civil rights laws. Thus, Ivey contends that this information, too, should have been presented to the grand jury by the prosecution.

We cannot agree. We note initially that Ivey himself testified at length before the grand jury. He was in the best position to know what his defense would be, yet he made no request of the state to call any of the various witnesses whom he later called in support of his motion to suppress. Moreover, as to Ivey's theory that evidence establishing the appropriateness of "experience-based" education in Barrow should have been presented to the grand jury, we emphasize that the prosecution did not challenge the legitimacy of the concept of such education. Instead, it questioned whether Ivey had provided any education whatsoever. As to Ivey's theory that his actions as extension center director were undertaken out of a sense of duty to compensate for the state's failure to comply with federal law, we note that Ivey's own testimony, both before the grand jury and at trial, fails to give the slightest indication that his actions were, in fact, taken in reliance upon the belief that they were mandated by federal law. Thus, the basic lack of relevancy of the first category of evidence which Ivey contends was

improperly withheld from the grand jury, and the lack of any factual support for the second category of evidence, would provide an ample basis to reject the claim that the prosecution was obligated to present this evidence to the grand jury.

There is an additional basis for rejecting Ivey's claim that this evidence should have been presented to the grand jury. The extent of a prosecutor's duty to present exculpatory evidence to the grand jury was recently addressed in Frink v. State, 597 P.2d 154, 165 (Alaska 1979), where the supreme court quoted with favor from Johnson v. Superior Court, 539 P.2d 792, 796 (Cal. 1975):

> [W]hen a district attorney seeking an indictment is aware of evidence reasonably tending to negate guilt, he is obligated . . . to inform the grand jury of its nature and existence, so that the grand jury may exercise its power under the statute to order the evidence produced.[8]

The court in Frink, however, tempered this conclusion with the following observation:

> But the prosecution's obligation to present exculpatory evidence to the grand jury does not turn the prosecutor into a defense attorney; the prosecution does not have to develop evidence for the defendant and present every lead possibly favorable to the defendant.

597 P.2d at 166.

We believe that the testimony Ivey contends should have been presented to the grand jury is so tenuous in its bearing to the issue of

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8. Cf. United States v. Agurs, 427 U.S. 497, 49 L.Ed.2d 342 (1976).

Ivey's innocence[9] and so barren of persuasive force that it would amount to an unprecedented departure from the careful balance adopted by the supreme court in Frink if we were to impose upon the prosecution the burden of presenting such evidence, especially in the absence of a prior, specific request by the accused.

IV. PREINDICTMENT DELAY

In his next argument, Ivey claims that he was denied due process of law by virtue of inexcusable preindictment delay. Ivey's initial attorney, Mr. Erwin, raised the issue of preindictment delay in support of the motion to dismiss which he submitted prior to the omnibus hearing below. During the omnibus hearing on June 6, 1977, the issue was argued only to a limited extent. Mr. Erwin represented to the court that he was incapable of calling the state's chief investigator as a witness to establish the inexcusable nature of the preindictment delay due to Ivey's inability to

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9. Furthermore, a number of the witnesses supposedly favorable to Ivey made statements which could obviously have been damaging to his defense. For example, Dr. Robert Hiatt, former president of the University of Alaska, while acknowledging that innovative, experience-based vocational education methods were legitimate and accepted modes of teaching, specifically testified that he could not believe that either teachers or students participating in a legitimate course of education, no matter how novel or innovative would be unaware of their participation. Professor Samuel Rogers, coordinator of occupational education for REA, testified that he could not conceive of students being enrolled in courses without their knowledge and consent. Rogers also stated, with specific reference to the extension center, that when he first met Ivey, in February 1976, Ivey solicited his ideas on occupational education and indicated that there was no active program established in Barrow. Finally, Elaine Ramos, head of REA during the spring semester 1976, testified that Ivey had never submitted any course proposals to her office for approval, despite the fact that she had personally instructed him he was required to do so.

In short, when viewed as a whole, the evidence which Ivey claims was wrongfully withheld from the grand jury is not only of marginal relevance, but it is also potentially inculpatory, rather than exculpatory, in nature.

come up with the money necessary to pay travel expenses for this witness. Mr. Erwin thus asked that the issue be reserved until the Public Defender Agency could be appointed or until the court could provide for Ivey's costs to be borne at state expense. The state opposed the motion, arguing that, regardless of whether the delay was excusable, Ivey had neither alleged nor shown any prejudice stemming from the period of preindictment delay. The court denied Ivey's motion, without provision for it to be renewed.

In dealing with this issue, we are inclined to agree with the argument advanced by the state at trial. While Ivey's inability to produce the state's chief investigator as a witness arguably justifies his failure to establish the unreasonableness of preindictment delay, this inability was entirely unrelated to, and therefore could not have excused, the absence of any showing of prejudice to Ivey. Both unreasonableness of delay and actual prejudice to the accused are prerequisites to a finding that pretrial delay has violated the due process rights of an accused. Coffey v. State, 585 P.2d 514, 519 (Alaska 1978); Yarbor v. State, 546 P.2d 564, 567 (Alaska 1976). Since Ivey's inability to establish prejudice at the omnibus hearing was unjustified, the trial court's rejection of his motion was proper, even assuming Ivey might later have shown, through the testimony of the state's investigator, that the delay leading to his indictment was unreasonable.

Ivey's belated attempt to argue prejudice for the first time on appeal is both inappropriate and unconvincing. We have considered Ivey's claims of prejudice under the plain error standard prescribed by Alaska R. Crim. P. 47(b) and conclude that his claim is without merit.[10]

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10. The prejudice alleged by Ivey on appeal falls into three categories: (1) faded memories of witnesses; (2) changes in testimony of

V. RACIAL DISCRIMINATION AND THE NEED TO COMPLY WITH FEDERAL LAW

Though this argument is shrouded in lengthy and confusing discussion which is often difficult to follow, it appears that the essence of Ivey's claim is that he had to violate University of Alaska regulations and Alaska criminal laws in order to carry out duties imposed upon him by the United States Constitution, federal civil rights laws and federal regulations.

Ivey claims that under the equal protection clause of the United States Constitution and various federal and civil rights acts, an affirmative duty was placed upon him to provide the Inupiat people of Barrow educational opportunities equal to those offered to non-natives in urban areas of the state. He further claims that the structure of the University of Alaska, oriented toward traditional classroom education, is inherently discriminatory when imposed in the cultural setting of a rural Alaskan community such as Barrow. Moreover, Ivey points out that the University of Alaska failed to comply with specific federal regulations requiring state schools to adopt

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(footnote 10 continued)

witnesses between the time of their initial police interviews or grand jury examination and trial; and (3) loss of records. Ivey had available to him extensive police reports summarizing witness interviews, as well as transcripts of all grand jury testimony. With these materials available to him, Ivey had the full opportunity to refresh the recollection of witnesses and to impeach inconsistent testimony. Beavers v. State, 492 P.2d 88, 92-94 (Alaska 1971). Our review of the record and of Ivey's brief on appeal leads us to the conclusion that there is significant doubt as to whether any records were, in fact, lost by the prosecution. In any event, we find that the records which Ivey claims to have been lost, even if available, would have created no reasonable possibility of affecting the jury's verdict.

comprehensive plans to assure appropriate vocational education to persons disadvantaged in the use of the English language. It is Ivey's contention that the University of Alaska's rural educational program was, on the whole, intentionally segregative. For all of these reasons, Ivey claims that his conduct in adopting non-traditional educational modes disapproved by the state was affirmatively mandated by federal law. This argument is a direct corollary to Ivey's claim that the prosecution failed to present exculpatory evidence of this nature to his grand jury.

There is no dispute that the requirements of certain federal regulations, specifically 45 CFR 102.6 (adopted February 1975) had not yet been implemented by the University of Alaska during the school year 1975-76. However, we find it difficult to believe that the state's failure to comply with federal requirements, no matter how egregious, would amount to a license for Ivey to commit forgery and fraud. More significantly, Ivey's testimony before the grand jury and at trial gives no indication whatsoever that his conduct was inspired by the need to carry out the federal laws he claims had been ignored by the state. There is virtually nothing in Ivey's testimony to support a finding that Ivey was even aware of the federal laws and regulations in this area at the time he served as director of the extension center.

Finally, the jury in this case was carefully and thoroughly instructed with respect to both the forgery and false pretenses charges that Ivey could not be convicted absent a finding, beyond a reasonable doubt, that he acted with specific fraudulent intent. Thus, even assuming Ivey's testimony supported the claim that he had acted in furtherance of and in reliance on federal law, the verdicts returned by the jury would evidence a unanimous rejection of these claims as a factual matter.

We have carefuily reviewed the record of Ivey's trial and of the various pretrial proceedings in this case, and we find no support for Ivey's assertion that this prosecution was designed, initiated, or pursued to prevent disclosure of civil rights violations committed by the state through the University of Alaska. We are convinced that the investigation, indictment, and trial in this case were the result of a legitimate belief, supported by substantial evidence, that Ivey had committed the violations of Alaska criminal law of which he stands convicted.

VI. FAILURE TO GIVE PROPER JURY INSTRUCTIONS

Error is claimed by Ivey in the fact that the trial court "failed or refused to instruct the jury as to the law of the case on the subjects of training, racial equality, civil rights compliance in public education, and consortium schooling (i.e., contracts, agency, employment)." No guidance is provided by appellant as to what specific instructions he believes would have been appropriate. No instructions of this type were requested below, nor did Ivey object to the court's failure to give instructions on the subjects mentioned.

Prior to submission of his case to the jury, Ivey's attorney appropriately made suggestions concerning proposed instructions dealing with elements of the offenses charged, the definition of knowledge and willfulness, and the definition of the intent necessary for conviction of forgery and false pretenses. Ultimately, Ivey's attorney had only one objection to the court's proposed instructions, and even this objection was resolved to his satisfaction.

As Ivey acknowledges in his brief, review of his claim that additional instructions should have been given must be confined to the issue of plain error pursuant to Alaska R. Crim. P. 47(b). It is extremely difficult for us to perceive how instructions on the suggested topics would be appropriate in the context of a criminal case involving charges of forgery and obtaining money by false pretenses. Given the fact that these suggested topics for jury instructions have been advanced for the first time on appeal, it is almost inconceivable that the trial judge could be viewed as having committed plain error in failing to spot the need for such instructions and failing to draft them on his own initiative.

Ivey's argument in favor of instructions on these topics suffers additionally from a mistaken premise on his part. Ivey asserts that the trial court in some manner adopted the prosecution's theory that only one mode of education could be considered valid--the traditional classroom method of teaching--and that the defendant was thereby precluded from arguing or presenting evidence to the jury concerning his educational theories, his beliefs about racial discrimination in Barrow, and his explanation concerning a consortium agreement between IU and the extension center. However, neither in eliciting testimony nor in presenting argument did the prosecution purport to advance the theory that only one method of education could be considered as legitimate. At no time did the court espouse or instruct upon such a theory. Instead, the state's theory as well as the trial court's instructions focused upon the critical issue of whether Ivey had fraudulently received money from the University of Alaska for instruction which never occurred at all, regardless of the educational method purportedly involved.

Both parties were free to present evidence concerning non-traditional concepts of occupational education, and Ivey was given great latitude

in this regard. Ivey testified extensively concerning his theories of occupational education and "experience-based" training, and he presented a number of witnesses to confirm the legitimacy of these theories and their suitability in a cultural setting such as Barrow. The court did not restrict Ivey in the presentation of his defense, nor did the state attempt to persuade the court as a matter of law, or the jury as a matter of fact, to reject alternative concepts in education as being improper. To the contrary, the state relied on the theory that Ivey simply did not do what he purported to do: that his innovative methods of education were not applied or carried through, but were merely an after-the-fact attempt by Ivey to convince the jury that he had made some educational efforts, when in fact he had made none.

The instructions of the court focused upon the necessary legal issues presented by the specific charges against Ivey, as well as upon the ground rules generally applicable to criminal trials. As to matters such as educational theory, the existence of contracts between IU and the extension center, and educational needs in a community such as Barrow, the court's instructions were appropriately neutral, leaving these factual issues to be determined by the jury based upon the evidence and argument presented.

We conclude that no error was committed by the trial court in failing to give jury instructions on the topics proposed by Ivey for the first time on appeal.

VII. TRIAL COURT'S DISMISSAL OF IVEY'S HABEAS CORPUS ACTION

Several days prior to sentencing, Ivey purported to file a habeas corpus action with the trial court. The case was not filed as a collateral civil action, as normally required, but was instead directly filed in the

principal criminal case, much as a motion in arrest of judgment might have been filed. See Alaska R. Crim. P. 34. The trial court dismissed Ivey's petition as premature, and Ivey appealed to the supreme court. The supreme court dismissed Ivey's appeal.

Ivey now purports to raise again, in the direct appeal of his conviction, the propriety of the trial court's dismissal of his attempt to attack his conviction collaterally by habeas corpus. Since the supreme court's dismissal of Ivey's earlier direct appeal from the trial court's dismissal of his petition constitutes an appellate ruling conclusively resolving the issue of the propriety of the trial court's order dismissing the petition, the issue cannot now be resurrected by Ivey. Moreover, since Ivey has separately raised as issues in this appeal virtually all the claims which he sought to raise in his petition for habeas corpus, the trial court's disposition of that petition has now been rendered moot.

VIII. PROPRIETY OF JURY SELECTION PROCESS

The impartiality of Ivey's jury is challenged next. Ivey claims that jurors selected from the Barrow area were closely related to prosecution witnesses and therefore automatically subject to dismissal for cause. Upon review of proceedings below, we conclude that this claim is frivolous.

Initially, the decision to proceed to trial in Barrow and to refrain from requesting a change of venue was made personally by Ivey. At no point did Ivey request the trial court to select jurors from the entire senate election district in which Barrow is located, rather than from the immediate Barrow area. There was no challenge made by Ivey to the jury panel as a whole. At one point, Ivey's attorney did attempt to challenge a prospective juror for cause on the basis that she was related within the

fourth degree of consanguinity to a prosecution witness. However, the district attorney correctly pointed out to the court and to defense counsel that, under Alaska R. Crim. P. 24(c)(9), relationship within the fourth degree of consanguinity constitutes a basis for dismissal of a juror for cause only if the relationship is to a party or an attorney. This rule does not apply to a potential witness. See City of Kotzebue v. Ipalook, 462 P.2d 75, 77 (Alaska 1969). After some discussion, Ivey's attorney dropped the issue and did not object on the same basis to any other prospective juror.

On appeal, Ivey once again asserts that relationship within the fourth degree of consanguinity to a prospective witness should have entitled him to excuse prospective jurors for cause. Besides the fact that this issue was not properly preserved below except as to one prospective juror, who did not serve on Ivey's jury, and besides the fact that Ivey's contention that he was entitled as a matter of right to excuse for cause those jurors who were related to prospective witnesses is manifestly incorrect, there are additional and independent reasons for rejecting Ivey's argument concerning jury bias. Review of the record of jury selection reveals that Ivey accepted his final panel without exhausting peremptory challenges, having exercised only eight challenges as to regular jurors and one as to an alternate. Jurors who were related to prosecution witnesses and who indicated that their relationship might actually impair their ability to serve impartially were, in fact, excused by the court for cause. Given all of these circumstances, it is apparent that Ivey cannot now question the composition of his jury. City of Kotzebue v. Ipalook, 462 P.2d at 77.[11]

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11. A number of minor occurrences are additionally cited by Ivey as examples of unfairness occurring during the selection of his jury. Having examined these instances of alleged impropriety, we conclude that Ivey's claims are unsupported by the record and are wholly unfounded.

 APPENDIX A

IX. ADMISSIBILITY OF EVIDENCE

In Ivey's final point on appeal, he contends that inadmissible evidence was permitted to be used against him. Several separate complaints are involved. Ivey's chief complaint is that it was impermissible to allow the individuals listed as instructors and students by Ivey on grade reports submitted to the University of Alaska to testify that they did not teach or take the courses listed on the reports. Ivey maintains that use of these individuals as "expert" witnesses was unwarranted because they were not sufficiently qualified in the field of occupational education to render reliable expert opinions as to whether classes had in fact been taught.

Ivey's claim is preposterous. The bulk of testimony rendered by these witnesses could by no stretch of the imagination be termed opinion testimony. Most questions posed to these witnesses were specifically directed to elicit answers concerning the witnesses' actual activities and contact with Ivey, the extension center, IU, and the subject matter of the courses which Ivey claimed had been taught. To the extent that these witnesses voiced any opinion as to whether they gave or received instruction, such opinions were beyond question sufficiently informed and helpful as lay testimony to be admitted without requiring any particular foundation or expertise. See, e.g., Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, 1192 (Alaska 1977).[12]

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12. Former Alaska Civil Rule 43(b), which controlled admissibility of evidence at the time of Ivey's trial, provided, in pertinent part:

> The admissibility of evidence shall be governed by these rules, or in the absence of rule, by the principles of common law as they may be interpreted by the courts of the state in the light of reason and experience. In the

Ivey also alludes to the fact that evidence of other misconduct was permitted to be elicited in the course of his cross-examination and on rebuttal. There was, in fact, considerable evidence indicating that Ivey's actions in obtaining instructors' payroll checks from the the University of Alaska by forgery and false pretenses were only a small part of an ongoing scheme by Ivey and Milne to defraud the University of Alaska, IU, and the North Slope Borough government. Aspects of the larger scheme were inextricably intertwined with Ivey's charges in the present case, and, in rebuttal to specific testimony given by Ivey in his own behalf, the prosecution made use of limited portions of that evidence.

For example, to rebut Ivey's testimony that IU had advanced extension center instructors' salaries with the understanding that IU would later be reimbursed by the University of Alaska, the state showed that the individuals listed as instructors on grade reports submitted by Ivey to the

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(footnote 12 continued)

> absence of rule, the evidence shall be presented according to the most convenient method prescribed by common law principles, and the principle which favors the reception of the evidence shall govern.

Rule 701 of the Alaska Rules of Evidence is instructive in this regard:

> Rule 701. Opinion Testimony by Lay Witnesses.
>
> If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perceptions of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

Although this rule was not in effect at the time of Ivey's trial, it is reflective of the markedly relaxed reading of early common law requirements for admissibility of opinion testimony by lay witnesses which became the dominant view over the first half of this century. See, e.g., Alaska Rules of Evidence, Commentary, Rule 701.

University of Alaska were in fact IU employees hired as trainees under a federal CETA grant to that university. Many of them had, in addition, been enrolled as IU students by Ivey and Milne, thereby enabling additional funds to be collected from the North Slope Borough in the form of tuition grants. In a number of other instances, also, similar testimony indicating involvement by Ivey in a broader scheme of misconduct was elicited by the state.

In almost all such instances, however, the evidence of other misconduct directly rebutted matters placed specifically at issue by the defense. To the extent that evidence indicating a broader scheme of misconduct by Ivey and Milne was necessary to give a full and accurate account of Ivey's conduct in a context which would be meaningful to the jury and not artificially restricted, it was clearly admissible. Mossberg v. State, 624 P.2d 796, 802-803 (Alaska 1981); Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 56 L.Ed.2d 410 (1978). Such evidence of other misconduct, most of which was presented without objection by the defense, was consistently probative and sufficiently restricted so that its probative value greatly exceeded any potential for prejudice which may have been created by the admission thereof. When the evidence of other misconduct is viewed in context and as a whole, it is apparent that the evidence had little tendency to divert the jury's attention from the primary issues involved in the case. We therefore find that no error was committed in the admission of such evidence.

Ivey's last complaint relates to the admission of the testimony of Romayne Kareen, an auditor for the State of Alaska who testified with respect to the sources of revenue of Inupiat University, about the amounts of funds in its bank accounts on given dates, and about certain expenditures reflected in those accounts. Ms. Kareen was not a certified public accountant,

and Ivey alleges that, because "auditors" are required to be certified public accountants for the purposes of AS 8.04.540 and AS 8.04.650, she was not qualified to testify. We disagree. The fact that Alaska law requires a person to be a certified public accountant in order to conduct and officially certify corporate or governmental audits does not confine the use of the term "auditor" to certified public accountants and does not disqualify individuals who are not certified public accountants from giving factually based testimony as to financial matters falling within the scope of their experience and personal knowledge.[13]

In this case, the record shows that the only objection voiced at trial to Ms. Kareen's testimony related to its scope. Ivey's counsel was appropriately concerned that her testimony be restricted to factual matters based upon her personal review of financial documents, rather than hypothetical opinions relating to matters such as overall financial status or

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13. In fact, the two statutes relied upon by Ivey lend no support whatsoever to his argument. AS 8.04.540, far from prohibiting use of the term "auditor" except by certified public accountants, specifically approves the use of that term by persons who hold or companies who hold valid permits to practice as public accountants but are not certified public accountants. AS 8.04.540 provides, in pertinent part:

> [H]owever, a person, partnership or corporation holding a live permit and whose offices in this state for the practice of public accounting are maintained and registered as required by §§ 350-380 of this chapter may hold himself or itself out to the public as an accountant or auditor.

AS 8.04.650 is concerned only with establishing a prima facie presumption regarding persons who hold themselves out to be public accountants or certified public accountants without first acquiring a state permit.

Personal, educational and testing requirements for "public accountants" and "certified public accountants" are significantly different, the latter category being substantially more rigorous. Compare AS 8.04.110-170 with AS 8.04.280-300. While the record shows that Romayne Kareen was not a certified public accountant, it is silent as to whether she was qualified as a public accountant.

solvency of IU. The prosecution stipulated to restrict Ms. Kareen's testimony to factual matters, and no further objection to her qualifications was voiced. Perusal of Ms. Kareen's testimony shows that she confined her remarks to information gained from records which she had personally reviewed.

There is no basis under these circumstances for Ivey's challenge to this witness. At no time did she purport to be a certified public accountant, and she specifically testified that her function in reviewing financial data relating to IU, the extension center, and certain other transactions engaged in by Ivey and Milne had not been to perform an official audit or form any professional opinions relating to financial status. We conclude that there is no indication that Ms. Kareen exceeded the proper scope of her expertise and personal knowledge in testifying as she did.

X. OTHER ISSUES

The issue of sufficiency of the evidence deserves specific attention, although it has not been raised by Ivey in so many words. This issue is implicit in a number of the arguments which Ivey has advanced on appeal. We choose to reach the issue because Ivey is a pro se litigant, and consequently we feel bound to construe his brief in a manner minimizing reliance on technical requirements of pleading and recognizing that substantive claims may often be raised by pro se litigants with less than optimal clarity.

A constant, underlying theme pervading much of the discussion in Ivey's opening and reply briefs seems directed at the fundamental contention that the evidence presented by the state was insufficient to support a finding of specific intent to defraud on his part, with respect to both the

forgery and false pretenses charges. We have reviewed the record as a whole in the light most favorable to the state, as we must do in determining sufficiency of the evidence. See, e.g., Hughes v. State, 513 P.2d 1115 (Alaska 1973). Based upon our review we conclude that there was ample evidence to allow reasonable jurors to differ on the issue of whether Ivey's guilt had been established beyond a reasonable doubt.

In light of the fact that Ivey has failed to brief a number of issues specifically raised by his attorneys in pretrial motions, we have independently reviewed the record in this case for plain error. Over the course of this lengthy and complex trial, the prosecutor presented overwhelming evidence of Ivey's guilt. Virtually every aspect of Ivey's defense was forcefully discredited on rebuttal. Having independently reviewed the record, we are unable to find plain error as to any of the issues raised at trial by Ivey's counsel which have not been pursued on appeal, or in any other matter.

Accordingly, the judgment of the superior court is AFFIRMED.

Filed and Entered
APPELLATE COURTS of the
STATE of ALASKA
AUG 19 1981
ROBERT D. BACON
CLERK
Deputy

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RICHARD C. IVEY, Appellant, vs. STATE OF ALASKA, Appellee.	)	Court of Appeals No. 4126
	)	O R D E R

Before: Bryner, Chief Judge, Singleton, Judge, and Rowland, Superior Court Judge. [Coats, Judge, not participating.]

On consideration of the petition for rehearing filed July 9, 1981,

IT IS ORDERED:

The petition for rehearing is denied.

Entered by direction of the court at Anchorage, Alaska on August 19, 1981.

CLERK OF THE COURT OF APPEALS

ROBERT D. BACON

ccs: Judges
Counsel

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD C. IVEY, Appellant, vs. STATE OF ALASKA, Appellee.	)	Supreme Court No. 4126 O R D E R

Superior Court No. 4FA 77-787 Cr.

Before: Burke, Chief Justice, Rabinowitz, Connor, Matthews and Compton, Justices.

On consideration of the petition for hearing filed September 4, 1981,

IT IS ORDERED:

The petition for hearing is denied.

Entered by direction of the court at Anchorage, Alaska on October 23, 1981.

CLERK OF THE SUPREME COURT

ROBERT D. BACON

ccs: Justices
Counsel
The Honorable Warren W. Taylor
Appeals Deputy, Fairbanks Trial Courts
Court of Appeals Judges

APPENDIX C

THE COURT OF APPEALS OF THE STATE OF ALASKA

RICHARD C. IVEY, Appellant, v. STATE OF ALASKA, Appellee.	)	File No. 4126
	)	MANDATE

TO: Superior Court of the State of Alaska,
Fourth Judicial District at Fairbanks.

Richard C. Ivey filed an appeal from an order of the Superior Court, Fourth Judicial District at Fairbanks, in Criminal action no. 77-787 entitled, "STATE OF ALASKA, Plaintiff vs. RICHARD C. IVEY, Defendant". The case was considered on the briefs submitted. On June 30, 1981, the court filed its written memorandum opinion and judgment. Appellant's petition for hearing was denied by the Supreme Court on October 23, 1981.

IT IS ORDERED:

The order of the Superior Court, entered on June 19, 1978, is affirmed.

Entered by direction of the Court and pursuant to Appellate Rule 507 at Anchorage, Alaska, on October 26, 1981.

CLERK OF THE COURT OF APPEALS

SEAL

Robert D. Bacon

APPENDIX D

Richard C. Ivey, Pro se
6333 College Grove Way #I-1
San Diego, CA 92115
Telephone: 714/287-3914

IN THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD C. IVEY, Appellant, -v- STATE OF ALASKA, Appellee.	Supreme Court No. 4126
	NOTICE OF APPEAL

Superior Court #4FA 77-787 Cr.

Notice is hereby given that Richard C. Ivey, the appellant above named, appeals to the Supreme Court of the United States from the final order of October 23, 1981, affirming the judgment of conviction entered herein on June 19, 1978, by the Superior Court for the State of Alaska, Fourth Judicial District, Hon. Warren W. Taylor, Presiding.

The names of the parties herein are Richard C. Ivey, appellant-defendant, and the State of Alaska, represented by Wilson L. Condon, Attorney General (attn: Patrick J. Gullufsen, District Attorney, Pouch KA, Juneau, AK 99811). Statutory authority for this appeal is Title 28, United States Code, Section 1257(2), and Rule 10, Rules of the United States Supreme Court.

Appellant was convicted of the crimes of false pretenses and

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IN THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD C. IVEY, Appellant, -v- STATE OF ALASKA, Appellee.	Supreme Court No. 4126

NOTICE OF APPEAL

Superior Court #4FA 77-787 Cr.

Notice is hereby given that Richard C. Ivey, the appellant above named, appeals to the Supreme Court of the United States from the final order of October 23, 1981, affirming the judgment of conviction entered herein on June 19, 1978, by the Superior Court for the State of Alaska, Fourth Judicial District, Hon. Warren W. Taylor, Presiding.

The names of the parties herein are Richard C. Ivey, appellant-defendant, and the State of Alaska, represented by Wilson L. Condon, Attorney General (attn: Patrick J. Gullufsen, District Attorney, Pouch KA, Juneau, AK 99811). Statutory authority for this appeal is Title 28, United States Code, Section 1257(2), and Rule 10, Rules of the United States Supreme Court.

Appellant was convicted of the crimes of false pretenses and

forgery in violation of former Alaska Statute §§11.20.360 and 11.25.010, respectively, and was sentenced to sixty days incarceration, payment of $26,000 fine, and ten years probation. Appellant's appeal bond was approved on June 22, 1978.

DATED this 31st day of October, 1981, at San Diego, California.

Richard C. Ivey

RICHARD C. IVEY, Appellant

RECEIVED
JAN 25 1982
CLERK
SUPREME COURT

No. 81 6106

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

Richard C. Ivey,

Appellant,

v.

State of Alaska

Appellee.

Motion for Leave to Proceed In Forma Pauperis

Richard C. Ivey
Pro se
6333 College Grove Way #1-1
San Diego, CA 92115
Telephone:
714/287-3914

Appellant, Richard C. Ivey, moves the Court for an order permitting him to proceed in this Court, in forma pauperis, with his appeal from the judgment of the Supreme Court of the State of Alaska entered in this cause on October 23, 1981, pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 46 of the Rules of this Court, and in support thereof attaches the affidavit of said appellant.

Appellant's jurisdictional statement is being filed with this motion and appellant's affidavit.

Dated at San Diego, California, this 21st day of January, 1982.

Richard C. Ivey

RICHARD C. IVEY, Appellant
6333 College Grove Way #I-1
San Diego, CA 92115
Telephone: 714/287-3914

Affidavit in Support of Motion to Proceed
on Appeal in Forma Pauperis

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Richard C. Ivey, being first duly sworn, deposes and say that I am the appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to presented pn appeal are set forth in accompanying jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of salary and wages which you received.

ANSWER: I am not currently employed. My last employment earnings were $66.00 for work performed on December 20, 1981, for Knoll & Corr, Attorneys at Law, 2366 Front Street, San Diego, CA 92101.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

ANSWER: San Diego County School District Warrants for substitute school teaching: July 1981 -- $51.00; June 1981 -- $778.70; May 1981 -- $717.50; April 1981 -- $420.00; March 1981 -- $615.50; February 1981 -- $686.90; and January 1981 -- $504.00; (b) interest from bank accounts: $20.00 approximately.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned. ANSWER: Total cumulate balance does not exceed $100.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ANSWER: NO.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER: Brenda Ivey, wife; Rachel Ivey, daughter; and Chad

Ivey, son.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Dated at San Diego, California, this 21st day of January, 1982.

Richard C. Ivey

RICHARD C. IVEY, Affiant
6333 College Grove Way #I-1
San Diego, CA 92115
Telephone: 714/287-3914

SUBSCRIBED AND SWORN TO before me this 21st day of January, 1982.

Notary Public for the State of California

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Dated: Supreme Court of the United States